No. 12806

United States Court of Appeals

for the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

WESTERN CONSTRUCTION COMPANY, Respondent.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

ALBIN JOHNSON, Respondent.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

ELLEN M. JOHNSON, Respondent.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

HULDAH JOHNSON, Respondent.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

GEORGE J. JOHNSON, Respondent.

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

J. A. JOHNSON Respondent.

Transcript of Record

In Two Volumes

Volume I

(Pages 1 to 334)

FILED
APR - 6 1951
PAUL P. O'BRIEN,
CLERK

Petitions to Review Decisions of the Tax Court of the United States.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

RALPH B. POTTS, ESQ.,

CARBERY O'SHEA, ESQ.

For Respondent:

WILFORD H. PAYNE, ESQ.

The Tax Court of the United States

Docket No. 15495

WESTERN CONSTRUCTION COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1947

Aug. 11—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 12—Copy of petition served on General Counsel.

Sept.29—Amended petition filed by petitioner. 9/30/47 Copy served.

Sept.30—Motion for extension to Nov. 3, 1947, to file answer filed by General Counsel. Granted.

Oct. 20—Answer to petition as amended filed by General Counsel.

Oct. 20—Request for hearing at Seattle, Washington, filed by General Counsel.

Oct. 29—Notice issued placing proceeding on Seattle, Wash., calendar. Service of answer and request made.

Dec. 17—Reply to answer to amended petition lodged by taxpayer. 3/2/48 filed.

1948

Mar. 1—Motion for leave to file reply out of time filed by taxpayer. 3/2/48 Granted and reply filed. 3/2/48 Copy served.

Mar. 23—Hearing set 5/17/48, Seattle, Wash.

May 24, 25 & 26—Hearing had before Judge Black on merits, consolidated & cases kept open to receive claim for refund; respondent to file amendment to answer by 6/20/48; reply 7/10/48. Stipulation of facts filed. Briefs due 8/15/48, replies 9/15/48.

July 12—Transcript of hearing May 24, 1948 filed.

July 12—Transcript of hearing May 25, 1948 filed.

July 12—Transcript of hearing May 26, 1948 filed.

Aug. 9—Motion for extension to 9/1/48 to file brief filed by taxpayer. 8/10/48 Granted.

Aug. 30—Motion for extension to 9/20/48 to file both briefs filed by taxpayer. 8/31/48 Granted.

Aug. 30—Entry of appearance of Carbery O'Shea.

Sept. 8—Brief filed by General Counsel.

Sept. 16—Motion for extension to Oct. 5, 1948, to file brief filed by taxpayer. Granted.

Oct. 5—Brief filed by taxpayer. Copy served.

Nov. 1—Reply brief filed by taxpayer. Copy served.

Nov. 5—Reply brief filed by General Counsel. Served 11/8/48.

1950

Mar. 22—Findings of fact and opinion rendered, Black, J. Decision will be entered under rule 50. 3/23/50 Copy served.

June 1—Respondent's computation filed.

June 6—Hearing set July 13/50 on respondent's computation.

July 13—Hearing had before Judge Kern on settlement, uncontested, referred to J. Black.

July 14—Decision entered, Black, J., Div. 15.

Oct. 9—Petition for review by U. S. Court of Appeals, 9th Circuit, filed by General Counsel.

Oct. 9—Stipulation of venue filed.

Nov. 3—Motion for extension to Jan. 5/51 to prepare and transmit the record filed by General Counsel.

Nov. 6—Proof of service filed.

Nov. 6—Proof of service with attached affidavit filed.

Nov. 3—Order enlarging time to Jan. 5/51 to prepare and transmit the record entered.

Dec. 21—Statement re diminution of record filed by General Counsel.

Dec. 21—Statement of points with statement of service thereon filed by General Counsel.

[Title of Tax Court and Cause.]

Docket No. 15495

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Bur. Symbols, Seattle IT:90D:DM), dated May 29th, 1947, and as a basis for his proceeding alleges as follows:

1. That the petitioner is a limited partnership regularly and duly created under the laws of the State of Washington with main offices at 605 Arctic Building, Seattle, 4, Washington. The returns for the periods here involved were filed with the Collector of Internal Revenue for the Tacoma District of the State of Washington.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on May 29th, 1947.

3. The taxes in controversy are income taxes for the calendar years 1942, 1943, 1944 and 1945 and are in the total amount of $594,735.72.

4. The determination of tax set forth in the said notice of deficiency is based on the following errors:

(a) That the Commissioner erred in making a determination that the limited partnership agreements of February 24th, 1942, and June 30th, 1943, of the general partners and limited partners of the Western Construction Company constituted an association, taxable as a corporation as prescribed by

Section 3797 (a) (3) of the Internal Revenue Code and Section 29.3797-5 of Regulations 111, and consequently assessing declared value excess profits tax and excess profits taxes and income and surtax as a corporation.

5. . The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) That J. A. Johnson, George Johnson and Albin Johnson as general partners, and Eleanor Rector, Evelyn Jorgens and Roy W. Johnson, Lloyd W. Johnson, Bernice Wallin, Winston Johnson, and Elsie Keil as limited partners formed on February 24th, 1942, a limited partnership under the laws of the State of Washington, complying in all respects with said laws; that it was the intention of all partners, both general and limited, to form a partnership for the purpose of conducting a general contracting business; that said partnership was in all respects carried on as a partnership, keeping its records and books as a partnership and doing all business as a partnership. That on June 30th, 1943, J. A. Johnson, George Johnson and Albin Johnson as general partners, Eleanor Rector, Evelyn Jorgens, Roy W. Johnson, Lloyd Johnson, Bernice Wallin, Winston Johnson, Elsie Keil, Lorraine Elingson, Rachel Gustafson and Vedola Johnson Kent, as limited partners amended the first Articles of Co-Partnership under the limited partnership laws of the State of Washington by forming a second limited partnership complying in all respects with the limited partnership laws of the State of Washington, maintained its books of accounts as a

partnership and in all respects doing business as a partnership. That in both said partnerships, the general partners assumed their proportionate shares of all profits and losses and in both partnerships the limited partners assumed their full liability under the limited partnership laws of the State of Washington and proportionately were entitled to their share of profits of the said partnership, if any; that said limited partners contributed additional capital and/or services to the said partnership.

That while it was provided in the Articles of Co-partnership that "The term for which the partnership shall exist is for ten years" that this clause merely restricted the duration of the partnership and did not extend the rights of the partnership after the death of a partner. That the laws of the State of Washington at the time of the formation of both of said copartnerships provided for the dissolution of said partnership upon the death of any partner and that the provision in the partnership agreement that the right is given to the general partners to continue the business upon the death or retirement of a general partner or a limited partner was for the purpose of maintaining the business as a going concern for the benefit of the beneficiary of the deceased partner, as well as the other partners during the probate of the deceased partner's estate and the winding up and dissolution of the partnership. That said copartnership kept its bank accounts as a copartnership and not as a corporation or association; that said copartnership kept its respective books and records as a copart-

nership and not as a corporation or association. That said copartnership had no officers or had not made or filed any articles of incorporation or association and that said copartnerships had conducted every aspect of its respective business as a limited copartnership, complying in all respects with the laws of the State of Washington, pertaining to limited partnerships.

6. That the Commissioner of Internal Revenue, the respondent herein did at approximately the same time that he made the re-determination of income tax liability disclosing a deficiency of $594,735.72 herein, determining that the limited partnership agreements set forth above constituted an association taxable as a corporation, gave notice of deficiency to the three general partners herein, distributing the entire income of the copartnership including the income of the limited partners to the three general partners. That the total sum of said notices of deficiency covering the Commissioners distributing the entire taxable income of the limited partnership to the three general partners, and the assessment against the alleged association is more than the entire income of said limited partnership during said taxable years of 1943, 1944 and 1945. That the respondent herein should be required to make an election as to which course respondent wishes to pursue, to wit: to assess the entire taxable income of said limited partnership to the three general partners or to the limited partnership as an association—one or the other—prior to the hearing of this case upon its merits. That the Commissioner

cannot in law or in equity at one and the same time distribute the income of the same entity to both the general partners and to an "association" composed of the general and limited partners.

Wherefore the petitioner prays that this Court may hear the proceeding and determine that the deficiency shown in the total amount of $594,735.72 as due from the petitioner for the years 1942, 1943, 1944 and 1945 should be voided and eliminated and that the petitioner be found not to be indebted to the United States Government for income taxes for said years.

/s/ RALPH B. POTTS,
Attorney for Petitioner.

State of Washington,
County of King—ss.

J. A. Johnson, being duly sworn, says that he is one of the general partners of the petitioner above named; that he has read the foregoing petition, or has had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ J. A. JOHNSON.

Subscribed and sworn to before me this 30th day of July, 1947.

[Seal] /s/ LUCILLE POTTS,
Notary Public in and for the State of Washington,
Residing at Seattle.

EXHIBIT A

Treasury Department
Internal Revenue Service
Seattle 1, Washington

May 29, 1947

Office of
Internal Revenue Agent in Charge
Seattle Division
305 A 1331 Third Avenue Building

IT:90D:DM

Western Construction Company
605 Arctic Building
Seattle, Washington

Gentlemen:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1942, December 31, 1943, December 31, 1944, and December 31, 1945, discloses a deficiency of $16,342.99; and the determination of your declared value excess profits tax liability for the taxable years mentioned discloses a deficiency of $117,753.45; and the determination of your excess profits tax liability for such years discloses a deficiency of $594,735.72, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday

or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington, for the attention of IT:90D:DM. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By /s/ L. E. HALLOWELL,
Acting Internal Revenue
Agent in Charge.

DM:mts

Enclosures:
Statement
Form of waiver

STATEMENT

:90D:DM

Western Construction Company
605 Arctic Building
Seattle, Washington

Tax liability for the taxable years ended December 31, 1942, De-
ıber 31, 1943, December 31, 1944, and December 31, 1945.

ar	Liability	Assessed	Deficiency
	Income Tax		
2	$ 4,085.00	none	$ 4,085.00
3	4,703.95	none	4,703.95
4	3,152.71	none	3,152.71
5	4,401.33	none	4,401.33
	$ 16,342.99		$ 16,342.99
	Declared Value Excess-Profits Tax		
2	$ 49,390.07	none	$ 49,390.07
3	43,432.61	none	43,432.61
4	6,677.60	none	6,677.60
5	18,253.17	none	18,253.17
	$117,753.45		$117,753.45
	Excess Profits Tax		
2	$255,736.68	none	$255,736.68
3	223,777.92	none	223,777.92
4	27,574.04	none	27,574.04
5	87,647.08	none	87,647.08
	$594,735.72		$594,735.72

In making this determination of your income, declared value ex-
profits and excess profits tax liability, careful consideration has
n given to the report of examination dated October 21, 1946; to
r protest dated January 14, 1947; and to the statements made at
conference held on April 14, 1947.

A copy of this letter and statement has been mailed to your repre-
ative, Mr. John H. Von Harten, 1411 Fourth Avenue Building,
ttle 1, Washington.

It is held that for income tax, declared value excess profits tax
excess profits tax purposes the Western Construction Company
er the so-called limited partnership agreements of February 24,
2, and June 30, 1943, constitutes an association taxable as a cor-
ation as prescribed by Section 3797 (a) (3) of the Internal Reve-
Code and Section 29.3797-5 of Regulations 111.

An excess profits credit based on invested capital has been com-
ed for each year on the capital and personal account balances at

the beginning of each year, less accrued corporation income taxe Appropriate recognition has been given to new capital under Sectio 718 (a) (6) of the Internal Revenue Code subject to the limitatior of Section 718 (a) (6) (E).

Taxable Year Ended December 31, 1942

Adjustments to Net Income

Since no corporation return was filed, taxable net income has bee computed as follows:

Net income per Western Construction Co. books		$421,359.1
Less salaries allowed:		
Winston Johnson	$ 1,513.04	
John A. Johnson	15,000.00	
George J. Johnson	15,000.00	
Albin Johnson	15,000.00	46,513.0
Charitable donations		678.9
Net income for declared value excess profits tax		$374,167.1

Declared Value Excess Profits Tax Computation

Net income for declared value excess-profits tax computation				$374,167.1
Less 10% of none.... value of capital stock as declared for the year ended June 30, 1942				none
Net income subject to declared value excess-profits tax				$374,167.
Portion	Amount	Rate	Tax	
5% of declared value of capital stock			none	
Balance	$374,167.17	13.2%	$49,390.07	
Total declared value excess profits tax				49,390.
Declared value excess-profits tax previously assessed				no retur
Deficiency of declared value excess-profits tax				$ 49,390.

Income Tax Computation—Normal Tax Net Income Computation

Net income for declared value excess-profits tax computation	$374,167.
Less: Declared value excess-profits tax	49,390
Net income	$324,777
Adjusted net income	$324,777
Less: Income subject to excess profits tax	309,277
Normal tax net income and surtax net income	$ 15,500

Normal Tax Computation

ɔrmal-tax net income			$ 15,500.00
	Portion	Rate	Amount of Tax
ɔrtion of normal-tax net income (not in excess of $5,000); and tax	$5,000.00	15%	$ 750.00
ɔrtion of normal-tax net income (in excess of $5,000 and not in excess of $20,000); and tax	10,500.00	17%	1,785.00
ɔtal normal tax			$2,535.00

Surtax Computation

ɪrtax net income	$15,500.00

Corporations With Surtax Net Incomes Over $50,000

	Portion	Rate	Amount of Tax
ɛrtion of surtax net income (not in excess of $25,000); and tax	$15,500.00	10%	$1,550.00
tal normal tax and surtax			$4,085.00
ɔome tax assessed			no return
ficiency of income tax			$4,085.00

Excess Profits Tax Computation

cess profits net income (adjusted net income supra)		$324,777.10
ss: Specific exemption	$ 5,000.00	
Excess profits credit	10,500.00	15,500.00
justed excess profits net income		$309,277.10
per cent of $309,277.10		278,349.39
ɛtax net income (computed without regard to the credit provided by section 26 (e)		324,777.10
per cent of $324,777.10		259,821.68
ome tax		4,085.00
ɛess of $259,821.68 over $4,085.00		$255,736.68
8,349.39 or $255,736.68 whichever is lesser		$255,736.68
rect excess profits tax liability		255,736.68
vious assessment		none
iciency in excess profits tax		$255,736.68

Taxable Year Ended December 31, 1943

Adjustments to Net Income

Since no corporation return was filed, taxable net income has bee
computed as follows:

Net income per Western Construction Co. books		$383,828.1
Less salaries:		
Albin Johnson	$15,000.00	
John A. Johnson	15,000.00	
George Johnson	15,000.00	
Roy Johnson	5,375.71	
Winston Johnson	3,792.44	54,168.1
Charitable donations		625.0
Net income for declared value excess profits tax		$329,034.9

Declared Value Excess-Profits Tax Computation

Net income for declared value excess-profits tax computation		$329,034.9
Less: 10% of none.... value of capital stock as declared for the year ended June 30, 1943		none
Net income subject to declared value excess profits tax		$329,034.9

Portion	Amount	Rate	Tax	
5% of declared value of capital stock				
Balance	$329,034.95	13.2%	$43,432.61	
Total declared value excess profits tax				43,432.
Declared value excess profits tax previously assessed				no retu
Deficiency of declared value excess-profits tax				$ 43,432.

Income Tax Computation—Normal Tax Net Income and Surtax Net Income Computation

Net income for declared value excess profits tax computation	$329,034.
Less: Declared value excess profits tax	43,432
Net income	$285,602
Adjusted net income	285,602
Less: Income subject to excess profits tax	267,809
Normal-tax net income and surtax net income	$ 17,792

Normal Tax Computation

ormal-tax net income			$ 17,792.39
	Portion	Rate	Amount of Tax
ɔrtion of normal-tax net income (not in excess of $5,000); and tax	$5,000.00	15%	$ 750.00
ɔrtion of normal-tax net income (in excess of $5,000 and not in excess of $20,000); and tax	12,792.39	17%	2,174.71
ɔtal normal tax			$2,924.71

Surtax Computation

ırtax net income	$17,792.39

Corporations With Surtax Net Incomes Not Over $50,000

	Portion	Rate	Amount of Tax
ɔrtion of surtax net income (not in excess of $25,000); and tax	$17,792.39	10%	$1,779.24
ɔtal normal tax and surtax			$4,703.95
come tax assessed			no return
ɛficiency of income tax			$4,703.95

Excess Profits Tax Computation—1943

ɛcess profits net income (adjusted net income supra)		$285,602.34
ss: Specific exemption	$ 5,000.00	
Excess profits credit	12,792.39	17,792.39
djusted excess profits net income		$267,809.95
per cent of $267,809.95		241,028.96
rtax net income (computed without regard to the credit provided by section 26 (c))		285,602.34
per cent of $285,602.34		228,481.87
ɔme tax (other than section 102)		4,703.95
cess of $228,481.87 over $4,703.95		223,777.92
41,028.96 or $223,777.92, whichever is lesser		223,777.92
rrect excess profits tax liability		223,777.92
ficiency in excess profits tax		none
		223,777.92

Taxable Year Ended December 31, 1944

Adjustments to Net Income

Since no corporation return was filed, taxable net income has been computed as follows:

Net income per Western Construction Co. books		$102,854.22
Less salaries:		
J. A. Johnson	$15,000.00	
George Johnson	15,000.00	
Albin Johnson	15,000.00	
Roy Johnson	2,099.72	
Winston Johnson	4,033.51	51,133.23
Charitable donations		715.00
Long-term capital gain		418.09
Net income for declared value excess profits tax purposes		$ 50,587.90

Declared Value Excess-Profits Tax Computation

Net income for declared value excess-profits tax computation	$ 50,587.90
Less: 10% of none.... value of capital stock as declared for the year ended June 30th, 1944	none
Net income subject to declared value excess-profits tax	50,587.90

	Amount	Rate	Tax
Balance	$50,587.90	13.2%	$6,677.60
Total declared value excess-profits tax			6,677.60
Declared value excess profits tax assessed			no return
Deficiency of declared value excess-profits tax			$ 6,677.60

Normal-Tax Net Income and Surtax Net Income Computation

Net income for declared value excess profits tax computation	$ 50,587.9
Excess of net long-term capital gain over net short-term capital loss	418.0
Total	$ 51,005.9
Less: Declared value excess profits tax	6,677.6
Net income	44,328.2
Adjusted net income	44,328.2
Less: Adjusted excess profits net income	32,250.3
Normal tax net income and surtax net income	$ 12,078.0

Computation of Income Tax—1944

Your income tax liability is properly computed under the alternative tax method as follows:

ormal tax and surtax net income including long term capital gain		$ 12,078.05
ess: Long-term capital gain		418.09
alance of normal tax and surtax net income		$ 11,659.96
ormal tax: $5,000.00 at 15%	$ 750.00	
$6,659.96 at 17%	1,132.19	$1,882.19
urtax ($11,659.96) at 10%	1,166.00	
artial tax		3,048.19
dd: 25% of long-term capital gain $418.09		104.52
otal alternative tax		$ 3,152.71
ncome tax liability		3,152.71
ncome tax assessed		none
eficiency of income tax		$ 3,152.71

Computation of Excess Profits Tax—1944

xcess Profits Credit		
Capital and surplus beginning of year:		
Capital and personal accounts	$597,725.88	
Less: 1942 and 1943 taxes accrued	581,126.23	16,599.65
New capital as limited bySec. 718 (a) (6) (E)	$16,599.65	
25% of new capital		4,149.91
Invested capital		$ 20,749.56
Credit—8% of $20,749.56		$ 1,659.96
xcess Profits Tax		
Adjusted net income	$ 44,328.39	
Less: Long-term capital gain	418.09	
Excess profits net income		$ 43,910.30
Less: Specific exemption	10,000.00	
Excess profits credit	1,659.96	11,659.96
Adjusted excess profits net income		32,250.34
95% of $32,250.34		30,637.82
Tentative excess profits tax		30,637.82
Less: Credit under Sec. 784 (10% of $30,637.82)		3,063.78
Correct excess profits tax liability		27,574.04
Previous assessment		none
Deficiency in excess profits tax		$ 27,574.04

Taxable Year Ended December 31, 1945

Adjustments to Net Income

Since no corporation return was filed, taxable net income has bee
computed as follows:

Net income per Western Construction Co. books		$195,869.5
Less salaries		
J. A. Johnson	$15,000.00	
George Johnson	15,000.00	
Albin Johnson	15,000.00	
Winston Johnson	4,178.48	49,178.4
Charitable contributions		1,204.1
Long-term capital gain		7,205.3
Net income for declared value excess profits tax purposes		$138,281.5

Declared Value Excess-Profits Tax Computation

Net income for declared value excess profits tax computation	$138,281.5
Less: 10% of none.... value of capital stock as declared for the year ended June 30th, 1945	none
Net income subject to declared value excess-profits tax	$138,281.5

Portion	Amount	Rate	Tax
5% of declared value of capital stock			none
Balance	$138,281.58	13.2%	$18,253.17

Total declared value excess-profits tax	$ 18,253.1
Declared value excess-profits tax assessed	no retur
Deficiency of declared value excess profits tax	$ 18,253.1

Normal Tax Net Income and Surtax Net Income Computation

Net income for declared value excess-profits tax computation	$138,281.5
Add: Excess of net long-term capital gain over net short-term capital loss	7,205.3
Total	$145,486.8
Less: Declared value excess-profits tax	18,253.1
Net income	$127,233.7
Adjusted net income	127,233.7
Less: Adjusted excess profits net income	110,028.4
Normal tax net income and surtax net income	$ 17,205.3

Computation of Income Tax—1945

Your income tax liability is properly computed under the alternative tax method as follows:

ormal tax and surtax net income including long-term capital gain		$ 17,205.31
ss: Long-term capital gain		7,205.31
lance		$ 10,000.00
ormal tax: $5,000.00 at 15%	$750.00	
$5,000.00 at 17%	850.00	$1,600.00
rtax at 10%	1,000.00	
rtial tax		$2,600.00
ld: 25% of long-term capital gain	1,801.33	
tal alternative tax		$4,401.33
come tax liability		4,401.33
come tax assessed		none
ficiency of income tax		$ 4,401.33

Computation of Excess Profits Tax—1945

cess Profits Credit

Capital and surplus beginning of year:		
Capital and personal accounts 12-31-44	$560,871.66	
Less: Accrued income taxes		
1942	$309,211.75	
1943	271,914.48	
1944	37,404.35	618,530.58
Balance		$(57,658.92)
Invested capital		none
Excess profits credit		none

Excess profits tax		
Adjusted net income	$127,233.72	
Less: Long-term capital gain	7,205.31	
Excess profits net income		$120,028.41
Less: Specific exemption	10,000.00	
Excess profits credit	none	10,000.00
Adjusted excess profits net income		110,028.41
95% of $110,028.41		104,526.99
Surtax net income (without regard to Section 26 (e) credit)		127,233.72
80% of $127,233.72		101,786.98
Income tax		4,401.33
Excess of $101,786.98 over $4,401.33		97,385.65
$104,526.99 or $97,385.65, whichever is lesser		97,385.65
Less: Credit under Section 784 (10% of $97,385.65)		9,738.57
Correct excess profits tax liability		87,647.08
Previous assessment		none
Deficiency in excess profits tax		$ 87,647.08

Received and Filed T.C.U.S. August 11, 1947.

[Title of Tax Court and Cause.]

AMENDED PETITION

Comes now the above-named petitioner and moves the Court that the petitioner's petition be amended as follows:

I.

That Paragraph three of the petition be amended to read:

"The taxes in controversy in this proceeding are:

Year	Kind of Tax	Alleged Deficiency
1942	Income Tax	$ 4,085.00
1943	Income Tax	4,703.95
1944	Income Tax	3,152.71
1945	Income Tax	4,401.33
		$ 16,342.99
1942	Declared Value Excess Profits Tax	$ 49,390.07
1943	Declared Value Excess Profits Tax	43,432.61
1944	Declared Value Excess Profits Tax	6,677.60
1945	Declared Value Excess Profits Tax	18,253.17
		$117,753.45
1942	Excess Profits Tax	$255,736.68
1943	Excess Profits Tax	223,777.92
1944	Excess Profits Tax	27,574.04
1945	Excess Profits Tax	87,647.08
		$594,735.72
	Aggregate Total	$728,832.16."

That the above be substituted for said paragraph three of the original petition.

II.

That Paragraph Six of the petition be amended to substitute the sum of $728,832.16 for the sum of $594,735.72.

III.

That the petitioner's prayer for relief in the original petition be amended as follows:

"Wherefore the petitioner prays that this Court may hear the proceeding and determine that the deficiencies shown in the total amount of $728,832.16 as due from the petitioner for the years 1942, 1943,

1944 and 1945 should be voided and eliminated and that the petitioner be found not to be indebted to the United States Government for any of said income tax for said years."

That the foregoing prayer be substituted for said prayer as set out in the original petition.

This motion is based upon the file herein and upon the following affidavit:

State of Washington,
County of King—ss.

Ralph B. Potts, being first duly sworn on oath deposes and says: That I am counsel for the petitioner above named; that in preparing the petition herein the affiant inadvertently and through error took the sum of $594,735.72, as set forth in Exhibit "A," and particularly the first page of the statement of Exhibit "A," as being the total sum of all of the deficiency assessments rather than just the deficiency covering the Commissioner's determination of excess profits liability; that at the same time the affiant prepared the petition herein, the affiant prepared petitions in the following cases: Albin Johnson vs. Commissioner of Internal Revenue, Docket No. 15496; Ellen M. Johnson vs. Commissioner of Internal Revenue, Docket No. 15497; Huldah Johnson vs. Commissioner of Internal Revenue, Docket No. 15498; George J. Johnson vs. Commissioner of Internal Revenue, Docket No. 15499; J. A. Johnson vs. Commissioner of Internal Revenue, Docket No. 15500; Roberta M. Johnson vs. Commissioner of Internal Revenue, Docket No. 15586; and Lloyd W.

Johnson vs. Commissioner of Internal Revenue, Docket No. 15588; and that in each of the foregoing docket cases the total tax deficiency determined by the Commissioner was the total sum set forth in the same location on Exhibit "A" as the $594,735.72 was set forth in the particular ninety day letter, or Exhibit "A" herein and was in the same arrangement on the page.

That the affiant, however, in paragraph four of the original petition, alleges that "the Commissioner erred in making a redetermination * * * and consequently assessing declared value excess profits tax and excess profits taxes and income and surtax as a corporation." In other words, affiant properly set forth the legal issue but inadvertently and in error neglected to include in the original petition as set forth on Exhibit A the sum of $16,342.99 and the sum of $117,753.45 as income tax liability and declared value excess profits tax liability respectively.

Further affiant saith not.

/s/ RALPH B. POTTS.

Subscribed and sworn to before me this 24th day of September, 1947.

[Seal]: /s/ H. ORLEY SOLOMON,
Notary Public in and for the State of Washington,
Residing at Seattle.

Presented by:

/s/ RALPH B. POTTS,
Attorney for Petitioner.

Received and filed T.C.U.S. September 29, 1947.

[Title of Tax Court and Cause.]

Docket No. 15495

ANSWER TO PETITION AS AMENDED

Now comes the Commissioner of Internal Revenue by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition herein, as amended, admits, alleges, and denies as follows:

1. Admits that Western Construction Company, the petitioner herein, has its main offices at 605 Arctic Building, Seattle 4, Washington. Admits that the said Western Construction Company purports to be a limited partnership under the laws of the State of Washington. It is also admitted that the returns of the Western Construction Company for the taxable years 1942 to 1945 inclusive, (which were made on partnership forms) were filed with the Collector of Internal Revenue for the District of Washington, located at Tacoma, Washington. Denies the remaining allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits that the Commissioner has asserted deficiencies in income taxes, declared-value excess profits taxes and excess profits taxes against petitioner for the years and in the amounts set forth in paragraph 3 of the petition as amended, all of which said amounts are in controversy in this proceeding.

4(a). Denies that in determining the deficiencies

asserted in the statutory notice the Commissioner committed errors as alleged in subparagraph (a) of paragraph 4 of the petition. Alleges that in determining the deficiencies asserted for the year 1945, as set forth in the deficiency notice, respondent erred in failing to disallow as costs or expenses to Western Construction Company the sum of $500.00 waived by said company on account of salary payments made during that year in contravention of the Stabilization Act of 1942.

5(a). Admits that under date of February 24, 1942, J. A. Johnson, George Johnson, and Albin Johnson, who are named as general partners, and Eleanor Rector, Evelyn Jorgens, Roy W. Johnson, Lloyd W. Johnson, Bernice Wallin, Winston Johnson, and Elsie Keil, who are named as limited partners, executed a document entitled "Certificate of Formation of a Limited Partnership." It is admitted that under date of June 30, 1943, J. A. Johnson, George Johnson, and Albin Johnson, who are named as general partners, and Eleanor Rector, Evelyn Jorgens, Roy W. Johnson, Lloyd Johnson, Bernice Wallin, Winston Johnson, Elsie Keil, Lorraine Ellingson, Rachel Gustafson, and Vedola Johnson Kent, who are named as limited partners, executed a document entitled "Certificate of Formation of a Limited Partnership." Admits that each of the aforesaid documents provides that "The term for which the partnership shall exist is for ten years." Denies each and every other material allegation contained in subparagraph (a) of paragraph 5 of the petition.

6. Admits that at approximately the same time that respondent issued his notice of deficiency against this petitioner, on the basis that Western Construction Company constituted an association taxable as a corporation for the taxable years 1942 to 1945, inclusive, he also issued notices of deficiency to J. A. Johnson, and his wife, to George Johnson and his wife, and to Albin Johnson in which respondent determined that the alleged limited partners named in the so-called partnership agreements mentioned above were not bona fide partners in the business of the Western Construction Company who might properly be recognized, for Federal tax purposes, and that the entire business income for the taxable years 1942 to 1945, inclusive, was distributable equally to the three alleged general partners of that business, namely: J. A. Johnson, George Johnson, and Albin Johnson. Denies each and every other material allegation contained in paragraph 6 of the petition.

7. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

8. For further answer to the petition herein respondent affirmatively alleges and shows that the deficiencies in declared-value excess profits taxes and excess profits taxes asserted for the taxable year 1945, as set forth in the deficiency notice from which the petition is taken, are understated on account of the failure of respondent to disallow as

costs to Western Construction Company for that year the sum of $500.00 on account of payments of salaries and wages in contravention of the Stabilization Act of 1942.

9. As a result of certain "Findings and Determination" of the National Wage Stabilization Board, Region XII, in the matter of "George Johnson, J. A. Johnson, and Albin Johnson, individually and as Co-Partners, doing business as Western Construction Company, 605 Arctic Building, Seattle, Washington," Docket No. 60-12-2316, dated April 17, 1946, to the effect that wages and salary payments had been made for the year ended December 31, 1945, in contravention of the Stabilization Act of 1942 and without obtaining approval of the War Labor Board, said Company, as employer, consented and agreed that for the purposes of calculating deductions under the Internal Revenue laws of the United States the sum of $500.00 should be disregarded as costs for said year.

10. The foregoing sum of $500.00 was not taken into account or disallowed as a deduction by respondent in computing the deficiencies in taxes of the Western Construction Company for the taxable year 1945, as determined and set forth in the statutory notice herein.

11. There is, accordingly, due and owing by petitioner for the taxable year 1945, a deficiency in declared-value excess profits tax in the amount of $18,319.17 instead of $18,253.17 as determined in the deficiency notice, and a deficiency in excess profits

tax for said year in the amount of $87,959.56 instead of $87,647.08 as determined in the deficiency notice. The details of the resulting increases in deficiencies as stated above are set forth in the attached recomputation for the year 1945 which is incorporated herein and made a part of this answer.

Wherefore, it is prayed that the petitioner's appeal be denied and that, excepting for the qualifications hereafter set forth, the deficiencies asserted in the statutory notice be sustained. Respondent further prays that this Court redetermine the deficiency in declared-value excess profits tax for the year 1945 to be in the amount determined by the Commisisoner, viz: $18,253.17 plus increased deficiency in the amount of $66.00; and that the Court further redetermine the deficiency in excess profits tax for the year 1945 to be in the amount determined by the Commissioner, viz: $87,647.08 plus an increased deficiency in the amount of $312.48. Claim for the increased deficiencies as stated above is hereby made by respondent pursuant to the provisions of section 272(e) of the Internal Revenue Code.

/s/ CHARLES OLIPHANT WHP
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Western Construction Company
605 Arctic Building,
Seattle, Washington

Taxable Year Ended December 31, 1945.

Declared-Value Excess Profits Tax

Net income disclosed by the statutory notice of deficiency dated 5/29/47	$138,281.58
Plus: Amount held to be unallowable as a deduction on account of salaries found by the National Wage Stabilization Board to have been paid in contravention of the Stabilization Act of 1942	500.00
Net income revised	$138,781.58
Less: 10% of $0.00—declared-value of capital stock for year ended 6/30/45	None
Balance subject to declared-value excess profits tax	$138,781.58
Declared-value excess profits tax at 13.2% on $138,781.58	18,319.17
Previously assessed—no return filed	None
Deficiency in declared-value excess profits tax	$ 18,319.17
Deficiency disclosed by the statutory notice of deficiency	18,253.17
Difference due to increase in income	$ 66.00

Income Tax

Net income for declared-value excess profits tax purposes	$138,781.58
Plus: Net long term capital gain	7,205.31
Net income	$145,986.89
Less: Declared-value excess profits tax	18,319.17
Adjusted net income	127,667.72
Less: Adjusted excess profits net income	110,462.41
Normal tax net income	17,205.31

Alternative Tax

Normal tax net income	$ 17,205.31
Less: Net long term capital gain	7,205.31
Balance	$ 10,000.00
Normal tax at 15% on $5,000.00	750.00
Normal tax at 17% on $5,000.00	850.00

Total normal tax	$ 1,600.00
Surtax at 10% on $10,000	1,000.00
Partial tax	2,600.00
Plus: 25% of long-term capital gain	1,801.33
Income tax liability	$ 4,401.33
Previously assessed—no return filed	None
Deficiency in income tax	$ 4,401.33
Deficiency disclosed by statutory notice of deficiency	4,401.33
Difference	None

Excess Profits Tax

Net income disclosed by the statutory notice of deficiency dated 5/29/47		$120,028.41
Plus: Amount held to be unallowable as a deduction on account of salaries found by the National Wage Stabilization Board to have been paid in contravention of the Stabilization Act of 1942		500.00
Balance		120,528.41
Less: Additional declared-value excess profits tax		66.00
Net income revised		$120,462.41
Less: Specific exemption	$10,000	
Excess profits credit	None	10,000.00
Adjusted excess profits net income		$110,462.41
95% of $110,462.41		$104,939.29
80% of $127,667.72		102,134.18
Less: Income tax under Chapter I		4,401.33
Excess profits tax		$ 97,732.85
Less: 10% of $97,732.85—current credit		9,773.29
Excess profits tax liability		$ 87,959.56
Previously assessed—no return filed		None
Deficiency in excess profits tax		$ 87,959.56
Deficiency disclosed by the statutory notice of deficiency		87,647.08
Difference due to increase in income		$ 312.48

Received and Filed T.C.U.S. October 20, 1947.

[Title of Tax Court and Cause.]

Docket No. 15495

REPLY TO ANSWER TO PETITION AS AMENDED

Comes now the petitioner by its attorney, Ralph B. Potts, and for reply to the Answer to Petition as Amended admits, alleges and denies as follows:

I.

In reply to the affirmative matter set up in Paragraphs 8, 9, 10 and 11 of said Answer, petitioner admits that the respondent herein disallowed as costs to petitioner for the taxable year 1945, the sum of $500.00 on account of payment of salary and wages in contravention of the Stabilization Act of 1942 and that on or about September 17th, 1946, the National Wage Stabilization Board, Region XII, in the matter of, "George Johnson, J. A. Johnson and Albin Johnson, individually and as sole partners doing business as Western Construction Compay, 605" made certain findings and determination to the effect that wages and salary payments had been made for the year ended December 31st, 1945, in contravention of the Stabilization Act of 1942 and without obtaining approval of the War Labor Board, and that therefore for the purposes of calculating deductions under the Internal Revenue Laws of the United States, the sum of $500.00 should be disregarded as costs for said year. That said sum of $500.00 was not taken into account or disallowed as a deductible cost in computing the deficiencies in taxes of the petitioner herein for the

taxable year 1945, as determined and set forth in the statutory notices herein, and petitioner admits that there is accordingly due and owing by petitioner for the taxable year, a difference in declared-value excess profits tax in the sum of $66.00 and a difference in excess profits for said year in the amount of $312.48 as determined in the deficiency notice.

II.

Petitioner denies each and every allegation and thing affirmatively pleaded in said Answer to Petition as Amended.

Wherefore your petitioner prays for judgment as prayed for in its Petition as Amended with the exception of the corrected matter set forth immediately above.

/s/ RALPH B. POTTS,
Counsel for Petitioner.

State of Washington,
County of King—ss.

J. A. Johnson, being duly sworn, says that he is one of the general partners of the petitioner above named; that he has read the foregoing Reply or has had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ J. A. JOHNSON.

Subscribed and sworn to before me this 12th day of December, 1947.

[Seal] /s/ RALPH B. POTTS,
Notary Public in and for the State of Washington,
Residing at Seattle.

Received T.C.U.S. December 16, 1947.

Lodged T.C.U.S. December 17, 1947.

Filed T.C.U.S. March 2, 1948.

The Tax Court of the United States
Washington

Docket No. 15495

WESTERN CONSTRUCTION COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court as set forth in its Findings of Fact and Opinion promulgated March 22, 1950, the respondent herein filed a computation on June 1, 1950, which was not contested by petitioner when called for hearing July 13, 1950, now therefore, it is

Ordered and Decided: That there are no defi-

ciencies in income tax, declared value excess-profits tax and excess profits tax for the calendar years 1942, 1943, 1944 and 1945.

[Seal] /s/ EUGENE BLACK,
Judge.

Entered July 14, 1950.

Served July 14, 1950.

[Title of Tax Court and Cause.]

Docket No. 15495

STIPULATION OF VENUE

Pursuant to the provisions of Section 1141(b)(2) of the United States Internal Revenue Code, it is hereby agreed and stipulated that the decision of The Tax Court of the United States in this proceeding may be reviewed by the United States Court of Appeals for the Ninth Circuit.

/s/ CHARLES OLIPHANT, C.A.R.
Chief Counsel, Bureau of Internal Revenue, Attorney for Respondent.

/s/ RALPH B. POTTS,
Attorney for Petitioner.

Received and filed T.C.U.S. October 9, 1950.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 15495

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

WESTERN CONSTRUCTION COMPANY,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on July 14, 1950, "that there are no deficiencies in income tax, declared value excess profits tax and excess profits tax for the calendar years 1942, 1943, 1944 and 1945" in respect of the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code. The parties have stipulated, pursuant to the provisions of Section 1141(b)(2) of the Internal Revenue Code, that the decision of The Tax Court of the United States in this proceeding may be reviewed by the United States Court of Appeals for the Ninth Circuit.

The respondent on review, Western Construction Company, is a limited partnership created under the laws of the State of Washington having its office at 605 Arctic Building, Seattle 4, Washington. Its

partnership returns for the years 1942 to 1945, inclusive, the years here involved, were filed with the Collector of Internal Revenue for the District of Washington, whose office is located in Tacoma, Washington.

Nature of Controversy

The respondent on review, Western Construction Company, was created as a limited partnership under the laws of the State of Washington in 1942 and again in 1943. Its certificate of formation included J. A. Johnson, George Johnson and Albin Johnson, three brothers, as its general partners and their several adult sons and daughters as limited partners. The partnership was engaged during the taxable years involved in the general contracting business. Prior to its organization the business had been conducted by a predecessor corporation known as Western Construction Company, Inc. In his determination of the deficiencies in income, declared value excess profits, and excess profits taxes which gave rise to the present proceeding, the Commissioner determined that the respondent, Western Construction Company, under the so-called limited partnership agreements of February 24, 1942, and June 30, 1943, constituted an association taxable as a corporation as prescribed by Section 3797(a)(3) of the Internal Revenue Code and Section 29.3797-5 of Regulations 111. The Tax Court of the United States disagreed with the Commissioner's determination and held that the Western Construction Company was a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership and that

it should be so recognized for tax purposes. Accordingly, in conformity of its opinion, the Tax Court entered its decision that there are no deficiencies in income tax, declared value excess profits tax and excess profits tax for the calendar years 1942, 1943, 1944 and 1945.

/s/ THERON L. CAUDLE, C.A.R.
Assistant Attorney General.

/s/ CHARLES OLIPHANT, C.A.R.
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Received and filed T.C.U.S. October 9, 1950.

[Title of Court of Appeals and Cause.]

T. C. Docket No. 15495

STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision that there are no deficiencies in income tax, declared value excess profits tax and excess profits tax for the calendar years 1942, 1943, 1944 and 1945.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner in so far as such deficiencies resulted from his determination that respondent on review was, during the taxable years involved, an association taxable as a corporation.

3. In holding and deciding that the respondent on review does not resemble an association in corporate form and is, therefore, not taxable as a corporation.

4. In failing and refusing to hold and decide, as determined by the Commissioner, that the respondent on review, under the so-called limited partnership agreements of February 24, 1942, and June 30, 1943, constituted an association taxable as a corporation as prescribed by Section 3797(a)(3) of the Internal Revenue Code and the Commissioner's regulations.

5. In that its ultimate finding that the taxpayer was not an association taxable as a corporation and its opinion and its decision are not supported by but are contrary to the evidence.

6. In that its opinion and its decision are contrary to law and the Commisisoner's regulations.

/s/ THERON L. CAUDLE, C.A.R.
Assistant Attorney General.

/s/ CHARLES OLIPHANT, C.A.R.
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of Service attached.

Received and filed T.C.U.S. December 21, 1950.

The Tax Court of the United States

Docket No. 15496

ALBIN JOHNSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1947

Aug. 11—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 12—Copy of petition served on General Counsel.

Oct. 1—Answer filed by General Counsel.

Oct. 1—Request for hearing in Seattle filed by General Counsel.

Oct. 10—Notice issued placing proceeding on Seattle, Wash., calendar. Service of answer and request made.

1948

Mar. 23—Hearing set 5/17/48, Seattle, Wash.

May 24, 25 & 26—Hearing had before Judge Black on merits. Oral motion to consolidate Docket 15496, 15497, 15498, 15499, 15500 & 15586 & 15588. Oral motion to keep cases open to receive claim for refund.

1948

Respondent to file amendment to answer by 6/20/48; petitioner's reply due 7/10/48; stipulation of facts filed. Briefs due 8/15/48; replies 9/15/48.

June 15—Amendment to respondent's answer filed by General Counsel.

July 12—Transcript of hearing May 24, 1948, filed.

July 12—Transcript of hearing May 25, 1948, filed.

July 12—Transcript of hearing May 26, 1948, filed.

Aug. 9—Motion for extension to 9/1/48 to file brief filed by taxpayer. 8/10/48 Granted.

Aug. 30—Motion for extension to 9/20/48 to file both briefs filed by taxpayer. 8/31/48 Granted.

Aug. 30—Entry of appearance of Carbery O'Shea as counsel filed.

Sept. 8—Brief filed by General Counsel.

Sept. 16—Motion for extension to Oct. 5, 1948, to file brief by taxpayer. Granted.

Oct. 5—Brief filed by taxpayer. Copy served.

Nov. 1—Reply brief filed by taxpayer. Copy served.

Nov. 5—Reply brief filed by General Counsel.

1950

Mar. 22—Findings of fact and opinion rendered, Black, J. Decision will be entered under rule 50. Copy served 3/23/50.

June 1—Respondent's computation filed.

June 6—Hearing set July 13/50 on respondent's computation.

July 13—Hearing had before Judge Kern on settlement, uncontested, referred to J. Black.

July 14—Decision entered, Black J., Div. 15.

Oct. 9—Petition for review by U. S. Court of Appeals, 9th Circuit, filed by General Counsel.

Nov. 2—Proof of service filed by General Counsel (2).

Nov. 3—Motion for extension to Jan. 5, 1951, to prepare and transmit the record filed by General Counsel.

Nov. 3—Order enlarging time to Jan. 5, 1951, to prepare and transmit the record entered.

Dec. 21—Statement re diminution of record filed by General Counsel.

Dec. 21—Statement of points with statement of service filed by General Counsel.

[Title of Tax Court and Cause.]

Docket No. 15496

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Bur. Symbols, Seattle IT:90D:DM), dated May 29th, 1947, and as a basis for his proceeding alleges as follows:

1. The petitioner is a citizen and resident of the United States, residing at 1061 East 88th, Seattle, Washington. The returns for the periods here involved were filed with the Collector of Internal Revenue for the Tacoma District of the State of Washington.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on May 29th, 1947.

3. The taxes in controversy are income taxes for the calendar years 1943, 1944 and 1945 and are in the total of $123,675.85.

4. The determination of tax set forth in the said notice of deficiency is based on the following errors:

(a) That the Commissioner erred in distributing the entire taxable income of the Western Construction Company, a limited partnership, to the three general partners of which the petitioner herein is one, instead of distributing the income ac-

cording to the interests of the limited partners as well as the general partners as per the returns of said limited and general partners.

(b) That the Commissioner erred in allowing only Fifteen Thousand Dollars as community income, one-half of which was reportable by petitioner's wife, for the reason that all of the income of said petitioner for the years 1943, 1944 and 1945 was community property.

(c) That the Commissioner erred in disallowing depreciation on personal auto, travel and auto expenses, auto insurance and entertainment, to the petitioner.

(d) That the Commissioner erred in including as income to the general partners for 1945 petitioner's pro rata share of the profits of a contract known as "Boeing Alterations" not completed by the partnership until 1946. That said partnership is on a "completed contract basis" and the gross profit was included erroneously in 1945 for the partnership, amounting to a total of $7,571.12, which should not have been included in said 1945 income of said partnership.

5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) That prior to the taxable years above mentioned the petitioner as one of three general partners doing business under the name and style of Western Construction Company, formed a limited partnership under and by virtue of the laws of the State of Washington, taking into said limited part-

nership, among others, the petitioner's children, to wit: Winston A. Johnson, Elsie Keil and Vedola Johnson Kent. That said Winston A. Johnson, Elsie Keil and Vedola Johnson Kent, while a son and daughters of the petitioner were bona fide partners in said business conducted under the name of Western Construction Company, contributing additional capital and credit and/or personal services to said partnership. That said partnership was regularly and duly created as a limited partnership under the laws of the State of Washington and that said partners, Winston A. Johnson, Elsie Keil and Vedola Johnson Kent assumed their proportionate full liability for losses under the limited partnership laws of the State of Washington, if any should occur, to the full amount of their capital investment, and were entitled to their proportionate share of any profits. That the creation of said limited partnership was for a business purpose and that it was the intention of the general partners and of the limited partners to carry on said construction business as a partnership. That said limited partners at different times drew from said limited partnership different amounts from their share of the profits and used said amounts for their own personal uses.

(b) The Commissioner erred in allowing only the sum of Fifteen Thousand Dollars per annum as community income. That this Court on March sixth, 1947, entered a decision in the case of Albin Johnson vs. Commissioner of Internal Revenue, Docket

Number 5856 in which among other things this Court definitely decided in passing upon the very same state of facts as is presented by the Commissioner's restriction of community income herein, that Albin Johnson, the petitioner herein married Rose Chapman on March 8th, 1941, and that his income from the copartnership doing business as Western Construction Company prior to his marriage was the separate income of the petitioner, but that his income from said copartnership after his marriage, with an exception of a small allowance as a reasonable return on his share of borrowed capital, was community property divisible between himself and his wife. That said decision is the law of this case. That there is nothing in the facts in this case different as far as the community property and separate property status of Albin Johnson is concerned than in said case decided by this Court on March 6th, 1947. That all of the income of petitioner herein was the community property of Albin Johnson and Rose Johnson, his wife, and not his separate property.

(c) That the Commissioner erred in disallowing depreciation on personal auto, travel and auto expenses, auto insurance and entertainment. That the petitioner alleges that said automobile was used in the business of Western Construction Company as an ordinary and necessary expense by the taxpayer in the activities of his business and that the agreement among the general partners provided that each general partner pay these expenses personally.

Starting the first of 1945 this arrangement was changed so that the partnership paid the expenses of the cars, travel and entertainment but the partners should still provide their own cars; that the partnership owned no automobiles and that the cars of the general partners were the only cars available to carry on the business of the copartnership and that the particular cars upon which depreciation and expense were charged were used exclusively to carry on said copartnership business. That the entertainment of engineers and travel expense was also paid by each partner according to the agreement set forth above and as a regular and necessary expense of the petitioner in carrying on said copartnership business.

(d) That the Commissioner erred in including as income to the general partners for 1945 the petitioner's pro rata share of the profits of a contract known as "Boeing Alterations" not completed by the partnership until 1946. That said partnership is on a "completed contract basis" and the gross profit was included erroneously in 1945 for the partnership, amounting to a total of $7,571.12, which should not have been included in said 1945 income of said partnership.

6. That the Commissioner, the respondent herein, did, at approximately the same time that he gave notice of deficiency, distributing the entire taxable income of the Western Construction Company to the three general partners, gave another notice of deficiency to said limited partnership as

a whole alleging it to be an association and assessing said alleged association $594,735.72. That the total sum of said notices of deficiency, covering the Commissioner's distributing the entre taxable income of the limited partnership to the three general partners, and the assessment against the alleged association is more than the entire income of said limited partnership during said taxable years of 1943, 1944 and 1945. That the respondent herein should be required to make an election as to which course respondent wishes to pursue, to wit: to assess the entire taxable income of said limited partnership to the three general partners or to the limited partnership as an association—one or the other—prior to the hearing of this case upon its merits. That the Commissioner cannot in law or in equity at one and the same time distribute the income of the same entity to both the general partners and to an "association" composed of the general and limited partners.

Wherefore the petitioner prays that this Court may hear the proceeding and determine that the deficiency shown in the total amount of $123,675.85 as due from the petitioner for the years 1943, 1944 and 1945 should be voided and eliminated and that the petitioner be found not to be indebted to the United States Government for income taxes for said years.

/s/ RALPH B. POTTS,
Attorney for Petitioner.

State of Washington,
County of King—ss.

Ralph B. Potts and John H. Von Harten, being separately sworn, each for himself deposes and says: that he is one of the attorney-in-facts under power of attorney for petitioner above named; that he acts pursuant to such power-of-attorney and that such power has not been revoked; that the petitioner is absent from the United States and that affiant is authorized to verify this petition; that he has read the foregoing petition, or has had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ RALPH B. POTTS,

/s/ JOHN H. VON HARTEN.

Subscribed and sworn to before me this 30th day of July, 1947.

[Seal] /s/ LUCILLE POTTS,
Notary Public in and for the State of Washington,
Residing at Seattle.

Power of Attorney

Know All Men by These Presents, that the undersigned, Albin Johnson, does by these presents hereby make, constitute and appoint Ralph B. Potts and John H. Von Harten his true and lawful attorneys to appear before the Treasury Department and represent him in connection with his federal income taxes for the years of 1943, 1944 and 1945, with full power of substitution and revocation, giving his said attorneys full power to do everything whatsoever requisite and necessary to be done and execute waivers of the statute of limitations, and to execute closing agreements as fully as the undersigned might do if done in his own capacity, at any time subsequent to the date hereof and prior to the revocation hereof.

It is requested that a copy of all communications, addressed to the undersigned, regarding any matter in which the said attorneys are hereby authorized to act be addressed to John H. Von Harten, 1411 Fourth Avenue Building, Seattle 1, Washington.

In Witness Whereof, the undersigned has caused this instrument to be executed this 14th day of January, 1947.

/s/ ALBIN JOHNSON.

Subscribed and sworn to before me this 14th day of January, 1947.

[Seal] /s/ LUCILLE POTTS,
Notary Public.

EXHIBIT A

Treasury Department
Internal Revenue Service
Seattle 1, Washington

May 29th, 1947

Office of
Internal Revenue Agent in Charge,
Seattle Division,
305 A 1331 Third Avenue Building,

IT:90D:DM

Mr. Albin Johnson
605 Arctic Building,
Seattle, Washington

Dear Mr. Johnson:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1943, 1944 and 1945 discloses a deficiency of $123,675.85, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington, for the attention of IT:90D:DM. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By /s/ L. E. HALLOWELL,
Acting Internal Revenue
Agent in Charge.

DM:mts

Enclosures:
Statement
Form of Waiver

IT:90D:DM

STATEMENT

Mr. Albin Johnson
605 Arctic Building
Seattle, Washington

Tax liability for the taxable years ended December 31, 1943, D cember 31, 1944, and December 31, 1945.

Year		Deficiency
1943	Income tax	$ 93,780.81
1944	Income tax	6,717.05
1945	Income tax	23,177.99
		$123,675.85

In making this determination of your income tax liability, caref consideration has been given to the reports of examination dated Fe ruary 5, 1946, and September 16, 1946; to your protests dated Ap 17, 1946, January 14, 1947, and February 11, 1947; and to the stat ments made at the conferences held on June 12, 1946, and April 1 1947.

A copy of this letter and statement has been mailed to your rep sentative, Mr. John H. Von Harten, 1411 Fourth Avenue Buildin Seattle 1, Washington, in accordance with the authority contained the power of attorney executed by you.

In the computation of your net income for each year mention it is held that you are taxable upon one-third of the net income of t business conducted under the name of the Western Construction C Of this income, only the amount of $15,000.00 per annum is held constitute community income, one-half of which is reportable by yo wife. It is held that your children, Winston A. Johnson, Elsie K and Vedola Kent were not bona fide partners in the business co ducted under the name of the Western Construction Co. during t taxable years mentioned.

In the computation of your 1942 and 1943 tax liabilities you ha been allowed the full $1,200.00 marital exemption and credit for t dependent children, with credit for an additional dependent for thr months in 1943. For 1944 and 1945 you have been allowed a surt exemption of $500.00 for yourself and $500.00 for each of your thr dependent children.

Taxable Year Ended December 31, 1942

Adjustments to Net Income

Net income as disclosed by original return	$ 31,651.
Unallowable deductions and additional income:	
(a) Long-term capital gain	3,691.
(b) Business income increased	98,173.
(c) Personal expenses disallowed	1,160.
	$134,678.
Additional deductions and nontaxable income:	
(d) Contributions	92.
	$134,585.

Explanation of Adjustments

(a) Your income is increased to reflect the long-term capital gain : $3,691.47 derived from the exchange of your personally owned ıpital stock of the Western Construction Co. Inc.

(b) Your income is increased to reflect your corrected share of the ɛt income of the Western Construction Co. The community portion : such income is limited to the amount of $15,000.00 designated by greement, as the maximum salary payable to the individuals manag-g the business for their services.

orrected business income	$139,948.70
ess: Allocable to wife (one-half of $15,000)	7,500.00
axable to you	$132,448.70
eported in return	34,274.72
crease	$ 98,173.98

(c) Your income is increased by the disallowance of the following nsubstantiated items which do not constitute necessary business ex-enses to you:

epreciation on personal car	$ 280.74
ar expense	418.93
ar insurance	207.22
ntertainment of engineers, etc.	600.00
aveling expenses	480.00
tal	$1,986.89
ss: One-half claimed on spouse's return	993.45
aimed and disallowed	$ 993.44

our income is further increased by the disallowance of alimony pay-nts made in excess of that required by your divorce decree.

imony claimed (one-half of $1,535.00)	$ 767.50
llowable	600.00
	$ 167.50
tal personal expenses disallowed	$1,160.94

(d) Your income is decreased to allow for additional charitable ntributions, as follows:

Contributions substantiated and allowable:

ne-half of community church contributions	$ 500.00
ne-third of Western Construction Co. charitable contributions	226.29
tal allowable	726.29
imed in return	633.50
ditional amount allowed	$ 92.79

Computation of Tax

Your tax liability is correctly computed under the alternative tax method as follows:

1.	Net income		$134,585.57
2.	Minus: Excess of net long-term capital gain over net short-term capital loss		3,691.47
3.	Ordinary net income		$130,894.10
4.	Less: Personal exemption	$ 1,200.00	
5.	Credit for dependents	700.00	1,900.00
6.	Balance (surtax net income)		$128,994.10
8.	Less: Earned income credit		1,400.00
9.	Balance subject to normal tax		$127,594.10
10.	Normal tax at 6 per cent	$ 7,655.65	
11.	Surtax on item 6	82,045.34	$ 89,700.99
12.	Partial tax		$ 89,700.99
13.	Plus: 50% of line 2		1,845.71
14.	Alternative tax		$ 91,546.70
15.	Correct tax on 1942 income		91,546.70

Taxable Year Ended December 31, 1943

Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
As disclosed by return	$ 30,023.33	$ 30,192.1
Unallowable deductions and additional income:		
(a) Business income increased	84,722.52	84,733.5
(b) Personal expenses disallowed	1,860.92	1,860.9
	$116,617.77	$116,786.0
(c) Contributions	319.93	—0—
	$116,297.84	$116,786.0

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share of the net income of the Western Construction Co. The community portion of such income is limited to the amount of $15,000.00 designated by agreement as the maximum salary payable to the individuals managing the business for their service.

Corrected business income		$124,886.63
Less: Allocable to wife (one-half of $15,000)		7,500.00
Taxable to you		$117,386.63
Reported in return		32,653.11
Increase		$ 84,733.52

(b) Your income is increased by the disallowance of the following unsubstantiated items which do not constitute necessary business expenses to you:

Car depreciation	$ 280.74
Car insurance	162.89
Entertainment	1,994.42
Traveling	928.74
Total	$3,366.79
Less: One-half claimed by spouse	1,683.39
Claimed and disallowed	$1,683.40

Your income is further increased by the disallowance of alimony payments made in excess of that required by your divorce decree.

Alimony claimed (one-half of $1,555.05)	$777.52	
Allowable	600.00	
Disallowed		177.52
Total personal expense disallowed		$1,860.92

(c) Your income is decreased to allow for additional charitable contributions as follows:

One-half of community contributions to Red Cross	$ 1.50
One-third of Western Construction Co. charitable contributions	416.66
Total allowable	$ 418.16
Claimed in return	98.23
Additional allowed	$ 319.93

1.	Income tax net income		$116,297.8
2.	Less: Personal exemption	$ 1,200.00	
	Credit for dependents	787.50	1,987.5
3.	Surtax net income		$114,310.3
4.	Less: Earned income credit		1,400.0
5.	Balance subject to normal tax		$112,910.3
6.	Normal tax at 6 per cent	$ 6,774.62	
7.	Surtax on Item 3	70,445.17	
8.	Total income tax (item 6 plus item 7)		77,219.7
10.	Balance of income tax		77,219.7
11.	Victory tax net income	$116,786.63	
12.	Less: Specific exemption	624.00	
13.	Income subject to victory tax	$116,162.63	
14.	Victory tax before credit (5% of line 13)	$ 5,808.13	
15.	Less: Victory tax credit, $500.00 plus 2¼ × $100.00	725.00	5,083.1
16.	Net victory tax		
17.	Net income tax and victory tax		$ 82,302.9
18.	Income tax for 1942		$ 91,546.7
19.	Amount of item 17 or 18 whichever is larger		$ 91,546.7
20.	Forgiveness feature:		
	(a) Amount of item 17 or 18 whichever is smaller	$ 82,302.92	
	(b) Amount forgiven (¾ of (a))	61,727.19	
	(c) Amount unforgiven		20,575.7
21.	Total income and victory tax liability		$112,122.4
22.	Income and victory tax liability disclosed by return, Account =6350172		18,341.6
23.	Deficiency in income and victory tax		$ 93,780.8

Taxable Year Ended December 31, 1944

Adjustments to Net Income

Net income as disclosed by return	$ 10,136.18
Unallowable deductions and additional income:	
(a) Business income increased	12,825.72
(b) Long-term capital gain increased	52.26
(c) Personal expenses disallowed	1,156.48
Net income as adjusted	$ 24,170.64

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share of the net income of the Western Construction Co. The community portion of such income is limited to the amount of $15,000.00 designated by agreement as the maximum salary payable to the individuals managing the business for their services.

Corrected business income	$ 32,100.97
Less: Allocable to wife (one-half of $15,000)	7,500.00
Taxable to you	$ 24,600.97
Reported in return	11,775.25
Increase	$ 12,825.72

(b) Your income is increased to reflect your corrected share of the long-term capital gain of the Western Construction Co. as follows:

One-third of Western Construction Co. long term capital gain	$ 69.68
Reported in return (one-half of $34.84)	17.42
	$ 52.26

(c) Your income is increased by the disallowance of the following unsubstantiated items which do not constitute necessary business expenses to you:

Depreciation on personal automobile	$ 280.74
Automobile expenses	710.06
Entertainment and travel	1,322.17
Total	$2,312.97
Less: One-half claimed on spouse's return	1,156.48
Claimed and disallowed	1,156.48

Computation of Tax

Your correct tax liability is computed under the alternative tax method as follows:

1.	Net income	$24,170.64
2.	Minus: Excess of net long-term capital gain over net short-term capital loss	69.68
3.	Ordinary net income	$24,100.96
4.	Less: Surtax exemptions	2,000.00
5.	Balance (surtax net income)	$22,100.96
6.	Surtax on line 5	$ 8,439.57
7.	Ordinary net income	$24,100.96
8.	Less: Normal-tax exemption	500.00
9.	Balance subject to normal tax	$23,600.96
10.	Normal tax at 3 per cent	$ 708.03
11.	Partial tax (sum of lines 6 and 10)	$ 9,147.60
12.	Plus: 50% of line 2	34.84
13.	Alternative tax	$ 9,182.44
14.	Correct tax liability	$ 9,182.44
15.	Income tax liability disclosed by return, Account #9002365	2,465.39
16.	Deficiency in income tax	$ 6,717.05

Taxable Year Ended December 31, 1945

Adjustments to Net Income

Net income as disclosed by return	$19,860.32
Unallowable deductions and additional income:	
(a) Business income increased	34,871.44
(b) Long-term capital gain increased	900.67
(c) Personal expenses disallowed	140.36
Total	$55,772.79
Nontaxable income and additional deductions:	
(d) Interest income decreased	1,076.65
Net income as adjusted	$54,696.14

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share of the net income of the Western Construction Company. The community portion of such income is limited to the amount of $15,000.00 designated by agreement as the maximum salary payable to the individuals managing the business for their services.

Corrected business income		$61,495.25
Less: Allocable to wife (one-half of $15,000)		7,500.00
		$53,995.25
Reported in return		19,123.81
Increase		$34,871.44

(b) Your income is increased to reflect your corrected share of the long-term capital gain of the Western Construction Co. as follows:

One-third of Western Construction Co. long-term capital gain		$ 1,200.89
Reported in return (one-half of $600.44)		300.22
		$ 900.67

(c) Your income is increased by the disallowance of the following unsubstantiated items which do not constitute necessary business expenses to you:

Depreciation on personal automobile		$ 280.72
Less: One-half claimed by spouse		140.36
		$ 140.36

(d) Your income is decreased by the elimination of so-called interest reported as having been received from your children as follows:

Winston A. Johnson	$876.65	
Elsie Keil	876.65	
Tedola Kent	400.00	$ 2,153.30
Total		
Less: One-half reported by spouse		$ 1,076.65
		$ 1,076.65

Since the transactions under which the purported liability of the children arose has been held to be ineffectual for income tax purposes, the interest entries are likewise held to be without substance and do not represent taxable income.

Computation of Tax

Your tax liability is correctly computed under the alternative tax method as follows:

1.	Net income	$54,696.14
2.	Minus: Excess of net long-term capital gain over net short-term capital loss	1,200.89
3.	Ordinary net income	$53,495.25
4.	Less: Surtax exemptions	2,000.00
5.	Balance (surtax net income)	$51,495.25
6.	Surtax on line 5	27,941.44
7.	Ordinary net income	53,495.25
8.	Less: Normal tax exemption	500.00
9.	Balance subject to normal tax	$52,995.25
10.	Normal tax at 3 per cent	$ 1,589.86
11.	Partial tax (sum of lines 6 and 10)	$29,531.30
12.	Plus: 50% of line 2	600.45
13.	Alternative tax	$30,131.75
14.	Correct tax liability	$30,131.75
15.	Income tax liability disclosed by return #3011862	6,953.76
16.	Deficiency	$23,177.99

Received and Filed T.C.U.S. August 11, 1947.

[Title of Tax Court and Cause.]

Docket No. 15496

ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, alleges and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4(a), (b), (c) and (d). Denies that in determining the deficiencies asserted for the taxable years involved the respondent committed any errors, and specifically denies the allegations of error and of fact contained in subparagraphs (a), (b), (c) and (d) of paragraph 4 of the petition.

5(a). Admits that petitioner, as one of three alleged general partners doing business under the name and style of Western Construction Company, in 1942 and 1943 purported to enter into certain limited partnerships and, among others, pretended to take into said business, as limited partners, petitioner's children, to wit: Winston A. Johnson, Elsie Keil and Vedola Johnson Kent. Denies each and every other material allegation contained in subparagraph (a) of paragraph 5 of the petition.

5(b). Admits that this Court on March 6, 1947, issued a memorandum opinion in the case of Albin Johnson v. Commissioner of Internal Revenue, Docket No. 5856 wherein it determined the amount of petitioner's separate and community income for the taxable year 1941 from certain copartnership from which income was derived in that year. Denies each and every other material allegation of error

and of fact contained in subparagraph (b) of paragraph 5 of the petition.

5(c) and (d). Denies each and every material allegation of error and of fact contained in subparagraphs (c) and (d) of paragraph 5 of the petition.

6. Admits that at approximately the same time as respondent issued the notice of deficiency in this proceeding determining the portion of the income of the Western Construction Company, which is includible, for Federal tax purposes in the return of this petitioner for the years involved, the Commissioner also issued a notice of deficiency to the Western Construction Company asserting against it deficiencies in Federal income, declared value excess profits taxes and excess profits taxes on the basis that it is an association taxable as a corporation under the Federal revenue laws for the taxable years 1942 to 1945, inclusive. Alleges that the aggregate of the deficiencies so asserted against the said Western Construction Company, for the years stated, amounts to $728,832.16 instead of $594,735.72 as alleged by petitioner. Denies each and every other material allegation contained in paragraph 6 of the petition.

7. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's ap-

peal be denied, and that the Commissioner's determination of deficiencies be approved.

/s/ CHARLES OLIPHANT, WHP.
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:
B. H. NEBLETT,
Division Counsel.

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Received and Filed T.C.U.S. October 1, 1947.

[Title of Tax Court and Cause.]

Docket No. 15496

AMENDMENT TO RESPONDENT'S ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, in accordance with Rule 17 of the Court's Rules of Practice and pursuant to oral motion on behalf of respondent which was granted by the Honorable Eugene Black, Judge of the Tax Court of the United States, at the hearing of this proceeding at Seattle, Washington, under date of May 26, 1948, by way of amendment to respondent's answer heretofore filed in the above-entitled cause and in order to conform his answer

to the proof in the case, respectfully alleges and pleads, in the alternative, as follows:

8. In the event the Court should hold and determine that the limited partnership agreement with respect to Western Construction Company, which was executed February 24, 1942, and purporting to be effective as of January 2, 1942, should be recognized and given effect for Federal tax purposes as to the so-called limited partners, rather than taxing the entire partnership income to the general partners (and their spouses), then:

(a). The three equal general partners, J. A. Johnson, George J. Johnson and Albin Johnson, are subject to tax with respect to one-half of the distributive partnership income (1/6 to each general partner) for the period January 2, 1942, to June 30, 1943 (the latter being the effective date of the second limited partnership agreement), instead of 45/105ths thereof (15/105ths as to each general partner) for the period during which the first limited partnership agreement was in effect, as reported in the individual income tax returns of said general partners and their spouses for the taxable years 1942 and 1943.

(b). Respondent hereby makes claim to any increase in the deficiency heretofore determined with respect to this petitioner which may result, as to each of the taxable years 1942 and 1943, by taxing each of the general partners (and his spouse) on 1/6 of the partnership income rather than 15/105ths

thereof for the period January 2, 1942, to June 30, 1943.

(c). Effect may be given to respondent's alternative contention herein under a Rule 50 computation to be later submitted, in the event the decision of the Court with respect to the issues presented should require it, inasmuch as a Rule 50 computation will be necessary in any event in order to give effect to certain stipulations and concessions made by the parties at the hearing as to adjustments of income for the years 1942 and 1943.

Wherefore, it is prayed that petitioner's appeal be denied and that respondent's determination be sustained.

/s/ CHARLES OLIPHANT, WHP
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Received and filed T.C.U.S. June 15, 1948.

Served June 17, 1948.

The Tax Court of the United States
Washington

Docket No. 15496

ALBIN JOHNSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court as set forth in its Findings of Fact and Opinion promulgated March 22, 1950, the respondent herein filed a computation on June 1, 1950, which was not contested by petitioner when called for hearing July 13, 1950, now therefore, it is

Ordered and Decided: that there are deficiencies in income tax for the calendar years 1943, 1944 and 1945 in the respective amounts of $9,311.96, $834.40 and $2,667.06.

[Seal] /s/ EUGENE BLACK,
Judge.

Entered July 14, 1950.

Served July 14, 1950.

In the United States Court of Appeals
for the Ninth Circuit

T. C. Docket No. 15496

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

ALBIN JOHNSON,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on July 14, 1950, that there are deficiencies for the calendar years 1943, 1944 and 1945 in the respective amounts of $9,311.96, $834.40 and $2,667.06 in respect of the Federal income tax liability of Albin Johnson, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Albin Johnson, is a citizen of the United States, residing at 1061 East 88th Street, Seattle, Washington, and having a place of business at 605 Arctic Building, Seattle, Washington. Respondent filed his Federal income tax

returns for the years 1943, 1944 and 1945, the taxable years here involved, with the Collector of Internal Revenue for the District of Washington, whose office is located in Tacoma, Washington, and within the jurisdiction of the United States Court of Appeals for the Ninth Circuit where this review is sought.

Nature of Controversy

The respondent on review, Albin Johnson was, during the taxable years here involved, one of the general partners of the Western Construction Company. The Western Construction Company was created as a limited partnership under the laws of the State of Washington in 1942 and again in 1943. Its certificate of formation included J. A. Johnson, George Johnson and Albin Johnson, three brothers, as its general partners and their several adult sons and daughters as limited partners. The partnership was engaged during the taxable years here involved in the general contracting business. Prior to its organization the business had been conducted by a predecessor corporation known as Western Construction Company, Inc. In his determination of deficiencies in income, declared value excess profits, and excess profits taxes against the partnership, the Commissioner determined that the Western Construction Company, under the so-called limited partnership agreements of February 24, 1942, and June 30, 1943, constituted an association taxable as a corporation as prescribed by Section 3797(a)(3)

of the Internal Revenue Code and Section 29.3797-5 of Regulations 111, and that the so-called partnership or association, rather than its individual members, was taxable on the income earned by it during the calendar years 1942 to 1945, inclusive. In the alternative, it was determined by the Commissioner that if the Western Construction Company was recognizable as a valid partnership, for Federal income tax purposes, its income was taxable entirely to its three general partners, one of whom was the respondent on review herein, rather than being taxable on a distributable basis to said general partners and the ten alleged limited partners, children of the three general partners.

The Tax Court of the United States disagreed with the Commissioner's determination and held that the Western Construction Company was a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership and that it should be so recognized for tax purposes. Accordingly, in conformity with its opinion, the Tax Court entered its decision that there are no deficiencies in income tax, declared value excess profits tax and excess profits tax for the calendar years 1942, 1943, 1944 and 1945 in respect of the partnership and, as to the respondent on review herein, Albin Johnson, refused to hold that his three children were not taxable on their shares of the partner-

ship income and that such shares were taxable to their father, the respondent herein.

/s/ THERON L. CAUDLE, C.A.R.
Assistant Attorney General.

/s/ CHARLES OLIPHANT, C.A.R.
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Received and filed T.C.U.S. October 9, 1950.

[Title of Court of Appeals and Cause.]

T. C. Docket No. 15496

STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision that there are deficiencies in income tax for the calendar years 1943, 1944 and 1945 in the respective amounts of only $9,311.96, $834.40 and $2,669.06.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner on

the basis that the taxpayer was taxable upon one-third of the net income of the business conducted under the name of Western Construction Company, less the community portion of such income allocable to taxpayer's wife, as modified by stipulation and agreement of the parties in respect of items not now in controversy.

3. In holding and deciding that the Western Construction Company is a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership and is recognized as such for tax purposes.

4. In failing and refusing to hold and decide that the Western Construction Company, during the taxable years involved, was a partnership consisting only of its three general partners, and that for Federal income tax purposes the income of such partnership was taxable to the general partners and their respective spouses and that the children of the general partners should not be recognized, for Federal income tax purposes, as bona fide partners in the business conducted by the said Western Construction Company.

5. In that its opinion and its decision that, for Federal income tax purposes, the Western Construction Company is a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of

the partnership is not supported by but is contrary to the evidence.

6. In that its opinion and its decision are not supported by but are contrary to the evidence.

7. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of Service attached.

Received and filed T.C.U.S. December 21, 1950.

The Tax Court of the United States

Docket No. 15497

ELLEN M. JOHNSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1947

Aug. 11—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 12—Copy of petition served on General Counsel.

Oct. 1—Answer filed by General Counsel.

Oct. 1—Request for hearing in Seattle filed by General Counsel.

Oct. 10—Notice issued placing proceeding on Seattle, Wash., calendar. Service of answer and request made.

1948

Mar. 23—Hearing set 5/17/48, Seattle, Wash.

May 24, 25 & 26—Hearing had before Judge Black on merits—consolidated, cases to be kept open to receive claim for refund. Respondent to file amendment to answer by 6/20/48; pe-

1948

titioner's reply 7/10/48, stipulation of facts filed, briefs due 8/15/48; replies 9/15/48.

June 15—Amendment to respondent's answer filed by General Counsel.

July 12—Transcript of hearing May 24, 1948, filed.

July 12—Transcript of hearing May 25, 1948, filed.

July 12—Transcript of hearing May 26, 1948, filed.

Aug. 9—Motion for extension to 9/1/48 to file brief filed by taxpayer. 8/10/48. Granted.

Aug. 30—Motion for extension to 9/20/48 to file both briefs filed by taxpayer. 8/31/48 Granted.

Aug. 30—Entry of appearance of Carbery O'Shea as counsel filed.

Sept. 8—Brief filed by General Counsel.

Sept. 16—Motion for extension to Oct. 5, 1948, to file brief filed by taxpayer. Granted.

Oct. 5—Brief filed by taxpayer. Copy served.

Nov. 1—Reply brief filed by taxpayer. Copy served.

Nov. 5—Reply brief filed by General Counsel.

1950

Mar. 22—Findings of fact and opinion rendered, Black, J. Decision will be entered under rule 50. Copy served 2/23/50.

June 1—Respondent's computation filed.

June 6—Hearing set July 13, 1950, on respondent's computation.

July 13—Hearing had before Judge Kern on settlement, uncontested, referred to J. Black.

July 14—Decision entered, Black, J., Div. 15.

Oct. 9—Petition for review by U. S. Court of Appeals, 9th Circuit, filed by General Counsel.

Nov. 2—Proof of service filed by General Counsel. (2).

Nov. 2—Affidavit of service of petition for review filed.

Nov. 3—Motion for extension to Jan. 5, 1951, to prepare and transmit the record filed by General Counsel.

Nov. 3—Order enlarging time to Jan. 5, 1951, to prepare and transmit the record entered.

Dec. 21—Statement re diminution of record filed by General Counsel.

Dec. 21—Statement of points with statement of service thereon filed by General Counsel.

The Tax Court of the United States

Docket No. 15497

ELLEN M. JOHNSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Bur. Symbols, Seattle IT:90D:DM) dated May 29th, 1947, and as a basis for her proceeding alleges as follows:

1. The petitioner is a citizen and resident of the United States, residing at 1619 East 52nd, Seattle, Washington. The returns for the periods here involved were filed with the Collector of Internal Revenue for the Tacoma District of the State of Washington.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on May 29th, 1947.

3. The taxes in controversy are income taxes for the calendar years 1943, 1944 and 1945 and are in the total amount of $38,467.40.

4. The determination of tax set forth in the said notice of deficiency is based on the following errors:

(a) That the Commissioner erred in distributing the entire taxable income of the Western Construction Company, a limited partnership, to the three general partners, one of whom is the husband of the petitioner herein, instead of distributing the income according to the interests of the limited partners as well as the general partners as per the returns of said limited and general partners. That the general partner, J. A. Johnson and your petitioner are husband and wife, and as such constitute a marital community and under the community property laws of the State of Washington have made separate returns, equally dividing the community income in half, your petitioner therefore making a return of one-half of the community income.

(b) That the Commissioner erred in disallowing depreciation on the personal auto of J. A. Johnson, husband of the petitioner herein, travel and auto expenses, auto insurance and entertainment, to the petitioner.

(c) That the Commissioner erred in including as income to the general partners of the Western Construction Company for 1945, the petitioner's pro rata share of the profits of a contract known as "Boeing Alterations" not completed by the partnership until 1946. That said partnership is on a "completed contract basis" and the gross profit was included erroneously in 1945 for the partnership, amounting to a total of $7,571.12, which should not have been included in said 1945 income of said partnership.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) That prior to the taxable years above mentioned the petitioner was the wife of J. A. Johnson, one of three general partners doing business under the name and style of Western Construction Company who formed a limited partnership under and by virtue of the laws of the State of Washington, taking into said limited partnership, among others, the petitioner's children, to wit: Roy W. Johnson, Evelyn Jorgens and Eleanor Rector. That said Roy W. Johnson, Evelyn Jorgens and Eleanor Rector, while a son and daughters of the petitioner were bona fide partners in said business conducted under the name of Western Construction Company, contributing additional capital and credit and/or personal services to said partnership. That said partnership was regularly and duly created as a limited partnership under the laws of the State of Washington, and that said partners, Roy W. Johnson, Evelyn Jorgens and Eleanor Rector assumed their proportionate full liability for losses, if any should occur, to the full amount of their capital investment under the limited partnership laws of the State of Washington, and were entitled to their proportionate share of any profits. That the creation of said limited partnership was for a business purpose and that it was the intention of the general partners and of the limited partners to carry on said construction business as a partnership. That said limited partners at different times drew from said limited partnership different amounts from their

share of the profits and used said amounts for their own personal use.

(b) That the Commissioner erred in disallowing depreciation on personal auto, travel and auto expenses, auto insurance and entertainment. That the petitioner alleges that said automobile was used by her husband, J. A. Johnson, in the business of Western Construction Company as an ordinary and necessary expense in the activities of his business and that the agreement among the general partners provided that each general partner pay these expenses personally. Starting the first of 1945 this arrangement was changed so that the partnership paid the expenses of the cars, travel and entertainment, but the partners should still provide their own cars; that the partnership owned no automobiles and that the cars of the general partners were the only cars available to carry on the business of the copartnership and that the particular cars upon which depreciation and expense were charged were used exclusively to carry on said copartnership business. That the entertainment of engineers and travel expense was also paid by each partner according to the agreement set forth above and as a regular and necessary expense of the husband of the petitioner in carrying on said copartnership business.

(c) That the Commissioner erred in including as income to the general partners of the Western Construction Company for 1945, the petitioner's pro rata share of the profits of a contract known as "Boeing Alterations" not completed by the partnership until 1946. That said partnership is on a "com-

pleted contract basis" and the gross profit was included erroneously in 1945 for the partnership, amounting to a total of $7,571.12, which should not have been included in said 1945 income of said partnership.

6. That the Commissioner, the respondent herein, did, at approximately the same time that he gave notice of deficiency, distributing the entire taxable income of the Western Construction Company to the three general partners, gave another notice of deficiency to said limited partnership as a whole alleging it to be an association and assessing said alleged association $594,735.72. That the total sum of said notices of deficiency covering the Commissioner's distributing the entire taxable income of the limited partnership to the three general partners, and the assessment against the alleged association is more than the entire income of said limited partnership during said taxable years of 1943, 1944 and 1945. That the respondent herein should be required to make an election as to which course respondent wishes to pursue, to wit: to assess the entire taxable income of said limited partnership to the three general partners or to the limited partnership as an association—one or the other—prior to the hearing of this case upon its merits. That the Commissioner cannot in law or in equity at one and the same time distribute the income of the same entity to both the general partners and to an "association" composed of the general and limited partners.

Wherefore the petitioner prays that this Court

may hear the proceeding and determine that the deficiency shown in the total amount of $38,467.40 as due from the petitioner for the years 1943, 1944 and 1945, should be voided and eliminated and that the petitioner be found not to be indebted to the United States Government for income taxes for said years.

/s/ RALPH B. POTTS,
Attorney for Petitioner.

State of Washington,
County of King—ss.

Ellen M. Johnson, being, first duly sworn, says that she is the petitioner above named; that she has read the foregoing petition, or has had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

/s/ ELLEN M. JOHNSON.

Subscribed and sworn to before me this 30th day of July, 1947.

[Seal] /s/ LUCILLE POTTS,
Notary Public in and for the State of Washington,
Residing at Seattle.

EXHIBIT A

Treasury Department
Internal Revenue Service
Seattle 1, Washington

May 29, 1947.

Seattle Division,
305 A 1331 Third
Ave. Building,

IT:90D:DM.

Mrs. Ellen M. Johnson,
605 Arctic Building,
Seattle 4, Washington.

Dear Mrs. Johnson:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1943, 1944, and 1945, discloses a deficiency of $38,467.40, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington, for the attention of IT:90D:DM. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner.

By /s/ L. E. HOLLOWELL,
Acting Internal Revenue
Agent in Charge.

DM:mts

Enclosures:
Statement
Form of Waiver

IT:90D:DM

STATEMENT

Mrs. Ellen M. Johnson
605 Arctic Building
Seattle, Washington

Tax liability for the taxable years ended December 31, 1943, December 31, 1944, and December 31, 1945.

Year		
1943	Income tax	$29,624.73
1944	Income tax	2,312.86
1945	Income tax	6,529.81
	Total	$38,467.40

In making this determination of your income tax liability, careful consideration has been given to the reports of examination dated February 5, 1946, and September 16, 1946; to your protests dated April 17, 1946, January 14, 1947, and February 11, 1947; and to the statements made at the conferences held on June 12, 1946, and April 14, 1947.

A copy of this letter and statement has been mailed to your representative, Mr. John H. Von Harten, 1411 Fourth Avenue Building, Seattle 1, Washington, in accordance with the authority contained in the power of attorney executed by you.

In the computation of your net income for each year mentioned it is held that you and your spouse are each taxable upon one-sixth of the net income of the business conducted under the name of Western Construction Co. It is held that for income tax purposes your children (Roy W. Johnson, Evelyn L. Jorgens and Eleanor J. Rector) were not bona fide partners in the business conducted under the name of Western Construction Co. during the taxable years mentioned.

Taxable Year Ended December 31, 1942

Adjustments to Net Income

Net income as disclosed by original return		$27,457.3
Unallowable deductions and additional income:		
(a) Long-term capital gain	$ 1,845.74	
(b) Business income increased	35,699.63	
(c) Personal expenses disallowed	1,038.95	38,584.3
		$66,041.7
Additional deductions and nontaxable income:		
(d) Contributions increased		64.6
Net income as adjusted		$65,977.0

Explanation of Adjustments

(a) Your income is increased to reflect your one-half share of the ong-term capital gain of $3,691.47 upon the exchange of community wned capital stock of the Western Construction Co., Inc.

(b) Your income is increased to reflect your corrected share of ncome of the Western Construction Co.

Such income is held to be community income and one-half thereof axable to your spouse. Increase in your income is computed as fol-ows:

ne-sixth of corrected Western Construction Co. net income	$69,974.35
eported in return	34,274.72
ncrease	$35,699.63

(c) Your income is increased by the disallowance of the following nsubstantiated items which do not constitute necessary business ex-enses to you:

epreciation on personal auto	$ 300.00
ar operating expense	494.64
ar insurance	203.27
ntertainment of engineers, etc.	600.00
ravel expense	480.00
	$ 2,077.91
ess: One-half claimed by spouse	1,038.96
alance claimed by taxpayer and disallowed	$ 1,038.95

(d) Your income is decreased to allow for additional charitable ntributions to be taken into account from the Western Construction o. as follows:

ne-sixth of Western Construction Co. contributions	$ 113.16
laimed in return	48.49
dditional allowance	$ 64.66

Computation of Tax

Your tax liability is correctly computed under the alternative tax ethod as follows:

. Net income	$65,977.04
. Minus: Excess of net long-term capital gain over net short-term capital loss	1,845.73
. Ordinary net income	$64,131.31
. Less: Personal exemption	600.00
. Balance (surtax net income)	$63,531.31
. Less: Earned income credit	1,396.01

9. Balance subject to normal tax		$62,135.30
10. Normal tax at 6 per cent	$ 3,728.12	
11. Surtax on item 6	32,276.60	
12. Partial tax		$36,004.72
13. Plus: 50% of line 2		922.86
14. Alternative tax		$36,927.58
15. Tax liability on 1942 income		$36,927.58

Taxable Year Ended December 31, 1943

Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return	$29,960.02	$31,321.46
Unallowable deductions and additional income:		
(a) Business income increased	$29,790.26	29,790.26
(b) Personal expenses disallowed	1,478.60	1,478.60
Total	$61,228.88	
Additional deductions and nontaxable income:		
(c) Contributions	111.62	—0—
Net income as adjusted	$61,117.26	$62,590.32

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share of income of the Western Construction Co.

Such income is held to be community income and one-half thereof taxable to your spouse. Increase in your income is computed as follows:

One-sixth of corrected Western Construction Co. net income	$62,443.37
Reported in return	32,653.17
Increase	$29,790.20

(b) Your income is increased by the disallowance of the following unsubstantiated items which do not constitute necessary business expenses to you:

Depreciation on personal auto	$ 300.00
Travel and auto expenses	1,232.00
Auto insurance	140.90
Entertainment	1,284.20
	$ 2,957.20
Less: One-half claimed by spouse	1,478.60
Balance disallowed	$ 1,478.60

(c) Your income is decreased to allow for additional charitable contributions to be taken into account from the Western Construction Co. as follows:

One-sixth of Western Construction Co. contributions	$ 208.34
Claimed in return	96.72
Additional allowance	$ 111.62

Computation of Income and Victory Tax

1.	Income tax net income		$61,117.26
2.	Less: Personal exemption		600.00
3.	Surtax net income		$60,517.26
4.	Less: Earned income credit		1,251.81
5.	Balance subject to normal tax		$59,265.45
6.	Normal tax at 6 per cent	$ 3,555.93	
7.	Surtax on item 3	30,196.91	
8.	Total income tax (item 6 plus item 7)		$33,752.84
10.	Balance of income tax		$33,752.84
11.	Victory tax net income	$62,590.32	
12.	Less: Specific exemption	624.00	
13.	Income subject to victory tax	$61,966.32	
14.	Victory tax before credit (5% of line 13)	$ 3,098.32	
15.	Less: Victory tax credit	500.00	
16.	Net victory tax		2,598.32
17.	Net income tax and victory tax		$36,351.16
18.	Income tax for 1942		$36,927.58
20.	Forgiveness feature:		
	(a) Amount of item 17 or 18 whichever is smaller	$36,351.16	
	(b) Amount forgiven (¾ of (a))	27,263.37	
	(c) Amount unforgiven		9,087.79
21.	Total income and victory tax liability		$46,015.37
22.	Income and victory tax liability disclosed by return, Account #6350167		16,390.64
23.	Deficiency in income victory tax		$29,624.73

Taxable Year Ended December 31, 1944

Adjustments to Net Income

Net income as disclosed by return	$ 9,136.1
Unallowable deduction and additional income:	
(a) Business income increased	4,275.2
(b) Long-term capital gain increased	17.4
(c) Personal expenses disallowed	1,267.2
Total	$14,696.0
Additional deductions and nontaxable income:	
(d) Contributions	59.5
Income as adjusted	$14,636.4

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share o income of the Western Construction Co.

Such income is held to be community income and one-half thereo taxable to your spouse. Increase in your income is computed as fol lows:

One-sixth of corrected Western Construction Co. net income	$16,050.4
Reported in return	11,775.2
Increase	$ 4,275.2

(b) Your income is increased to reflect your corrected share of the Western Construction Co. long-term capital gain as follows:

One-sixth of Western Construction Co. long-term capital gain	$ 34.8
Reported in return	17.4
Increase	$ 17.4

(c) Your income is increased by the disallowance of the follow ing unsubstantiated items which do not constitute necessary busines expenses to you:

Depreciation on personal auto	$ 300.0
Car operating expense	742.5
Entertainment	597.0
Travel	895.0
	$ 2,534.5
Less: One-half claimed by spouse	1,267.2
Disallowed	$ 1,267.2

(d) Your income is decreased to allow for additional charitabl contributions to be taken into account from the Western Construction Co. as follows:

One-sixth of Western Construction Co. contributions	$ 119.1
Claimed in return	59.5
Additional allowance	$ 59.5

Computation of Income Tax—1944

Net income	$14,636.43	
Less: Surtax exemption	500.00	
Surtax net income	$14,136.43	
Surtax		$ 4,324.12
Net income	$14,636.43	
Less: Normal-tax exemption	500.00	
Balance subject to normal tax	$14,136.43	
Normal tax at 3 per cent		424.09
Income tax liability		$ 4,748.21
Income tax liability disclosed by return, Account #9001233		2,435.35
Deficiency in income tax		$ 2,312.86

Taxable Year Ended December 31, 1945

Adjustments to Net Income

Net income as disclosed by return	$18,078.43
Unallowable deductions and additional income:	
(a) Business income increased	11,623.82
(b) Long-term capital gain increased	300.22
(c) Personal expenses disallowed	150.00
Total	$30,152.47
Nontaxable income and additional deductions:	
(d) Interest income decreased	1,079.13
(e) Contributions increased	100.35
	$28,972.99

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share of income of the Western Construction Co.

Such income is held to be community income and one-half thereof taxable to your spouse. Increase in your income is computed as follows:

One-sixth of corrected Western Construction Co. net income	$30,747.63
Reported in return	19,123.81
Increase	$11,623.82

(b) Your income is increased to reflect your corrected share of the Western Construction Co. long-term capital gain as follows:

One-sixth of Western Construction Co. long-term capital gain		$ 600.44
Reported in return		300.22
Increase		$ 300.22

(c) Your income is increased by the disallowance of the following unsubstantiated items which do not constitute necessary business expenses to you:

Car depreciation		$ 300.00
Less: One-half claimed by spouse		150.00
Claimed by taxpayer and disallowed		$ 150.00

(d) Your income is decreased by the elimination of so-called interest reported as having been received from your children as follows:

Roy W. Johnson	$719.42	
Evelyn L. Jorgens	719.42	
Eleanor J. Rector	719.42	$ 2,158.26
Less: Reported on return of spouse (one-half)		1,079.13
Reduction of income		$ 1,079.13

Since the transactions under which the purported liability of the children arose has been held to be ineffectual for income tax purposes the interest entries are likewise held to be without substance and do not represent taxable income.

(e) Your income is decreased to allow for additional charitable contributions to be taken into account from the Western Construction Co. as follows:

One-sixth of Western Construction Co. contributions	$ 200.70
Claimed in return	100.35
Additional allowance	$ 100.35

Computation of Tax

Your tax liability is correctly computed under the alternative tax method as follows:

1.	Net income	$28,972.99
2.	Minus: Excess of net long-term capital gain over net short-term capital loss	600.44
3.	Ordinary net income	$28,372.55
4.	Less: Surtax exemptions	500.00
5.	Balance (surtax net income)	$27,872.55
6.	Surtax on line 5	$11,900.98
7.	Ordinary net income	$28,372.55
8.	Less: Normal-tax exemption	500.00
9.	Balance subject to normal tax	$27,872.55
10.	Normal tax at 3 per cent	$ 836.18
11.	Partial tax (sum of lines 6 and 10)	$12,737.16
12.	Plus: 50% of line 2	300.22
13.	Alternative tax	$13,037.38
14.	Income tax liability	$13,037.38
15.	Liability disclosed by return Account #9001264	6,507.57
16.	Deficiency in income tax	$ 6,529.81

Received and Filed T.C.U.S. August 11, 1947.

[Title of Tax Court and Cause.]

Docket No. 15497

ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, alleges and denies as follows:

1. Admits the allegations contained in paragragh 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4(a). Admits that J. A. Johnson and the petitioner herein are husband and wife and as such constitute a martial community under the community property laws of the State of Washington. Admits that for the taxable years involved in this proceeding, petitioner and her husband have made separate returns purporting to divide their income equally on a community property basis for Federal tax purposes. Denies the remaining allegations of error and of fact contained in subparagraph (a) of paragraph 4 of the petition.

4(b) and (c). Denies the allegations of error and of fact contained in subparagraphs (b) and (c) of paragraph 4 of the petition.

5(a). Admits that petitioner is the wife of J. A. Johnson, one of three alleged general partners doing business under the name and style of Western Construction Company, who in 1942 and 1943 purported to enter into certain limited partnerships, and, among others, pretended to take into said business, as limited partners, petitioner's children, to wit: Roy W. Johnson, Evelyn Jorgens and Eleanor Rector. Denies each and every other material allegation contained in subparagraph (a) of paragraph 5 of the petition.

5(b) and (c). Denies each and every material allegation of error and of fact contained in subparagraphs (b) and (c) of paragraph 5 of the petition.

6. Admits that at approximately the same time as respondent issued the notice of deficiency in this proceeding determining the portion of the income of the Western Construction Company, which is includible for Federal tax purposes, in the return of this petitioner for the years involved, the Commissioner also issued a notice of deficiency to the Western Construction Company asserting against it deficiences in Federal income, declared value excess profits taxes and excess profits taxes on the basis that it is an association taxable as a corporation under the Federal revenue laws for the taxable years 1942 to 1945, inclusive. Alleges that the aggregate of the deficiencies so asserted against the said Western Construction Company for the years stated amounts to $728,832.16 instead of $594,735.72 as alleged by petitioner. Denies each and every other

material allegation contained in paragraph 6 of the petition.

7. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied, and that the Commissioner's determination of deficiencies be approved.

/s/ CHARLES OLIPHANT, W.H.P.
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:
B. H. NEBLETT,
Division Counsel.

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Received and Filed T.C.U.S. October 1, 1947.

[Title of Tax Court and Cause.]

Docket No. 15497

AMENDMENT TO RESPONDENT'S ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, in accordance with Rule 17 of the Court's Rules of Practice and pursuant to oral motion on behalf of respondent which was granted by the Honorable Eugene Black, Judge of the Tax Court of the United States, at the hearing of this proceeding at Seattle, Washington, under date of May 26, 1948, by way of amendment to respondent's answer heretofore filed in the above-entitled cause and in order to conform his answer to the proof in the case, respectfully alleges and pleads, in the alternative, as follows:

8. In the event the Court should hold and determine that the limited partnership agreement with respect to Western Construction Company, which was executed February 24, 1942, and purporting to be effective as of January 2, 1942, should be recognized and given effect for Federal tax purposes as to the so-called limited partners, rather than taxing the entire partnership income to the general partners (and their spouses), then:

(a). The three equal general partners, J. A. Johnson, George J. Johnson and Albin Johnson are subject to tax with respect to one-half of the dis-

tributive partnership income (1/6 to each general partner) for the period January 2, 1942, to June 30, 1943 (the latter being the effective date of the second limited partnership agreement), instead of 45/105ths thereof (15/105ths as to each general partner) for the period during which the first limited partnership agreement was in effect, as reported in the individual income tax returns of said general partners and their spouses for the taxable years 1942 and 1943.

(b) Respondent hereby makes claim to any increase in the deficiency heretofore determined with respect to this petitioner which may result, as to each of the taxable years 1942 and 1943, by taxing each of the general partners (and his spouse) on 1/6 of the partnership income rather than 15/105ths thereof for the period January 2, 1942, to June 30, 1943.

(c). Effect may be given to respondent's alternative contention herein under a Rule 50 computation to be later submitted, in the event the decision of the Court with respect to the issues presented should require it, inasmuch as a Rule 50 computation will be necessary in any event in order to give effect to certain stipulations and concessions made by the parties at the hearing as to adjustments of income for the years 1942 and 1943.

Wherefore, it is prayed that petitioner's appeal

be denied and that respondent's determination be sustained.

/s/ CHARLES OLIPHANT, W.H.P.
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:
B. H. NEBLETT,
Division Counsel.

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Received and Filed T.C.U.S., June 15, 1948.

Served June 17, 1948.

The Tax Court of the United States,
Washington

Docket No. 15497

ELLEN M. JOHNSON,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court as set forth in its Findings of Fact and Opinion promulgated March 22, 1950, the respondent herein filed a

computation on June 1, 1950, which was not contested by petitioner when called for hearing July 13, 1950, now therefore, it is

Ordered and Decided: that there are deficiencies in income tax for the calendar years 1943 and 1944 in the respective amounts of $3,348.71 and $357.89; and that there is an overpayment in income tax for the calendar year 1945 in the amount of $232.81, which amount was paid within two years before the mailing of the notice of deficiency.

[Seal] /s/ EUGENE BLACK,
Judge.

Entered July 14, 1950.

Served July 14, 1950.

In the United States Court of Appeals for the Ninth Circuit

T. C. Docket No. 15497

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

ELLEN M. JOHNSON,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby

petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on July 14, 1950, that there are deficiencies for the calendar years 1943 and 1944 in the respective amounts of $3,348.71 and $357.89, and that there is an overpayment for the calendar year 1945, in the amount of $232.81, in respect of the Federal income tax liability of Ellen M. Johnson, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Ellen M. Johnson, is a citizen of the United States, residing at 1619 East 52nd Street, Seattle, Washington, and having an office address at 605 Arctic Building, Seattle, Washington. Respondent filed her Federal income tax returns for the years 1943, 1944 and 1945, the taxable years here involved, with the Collector of Internal Revenue for the District of Washington, whose office is located in Tacoma, Washington, and within the jurisdiction of the United States Court of Appeals for the Ninth Circuit where this review is sought.

Nature of Controversy

The respondent on review, Ellen M. Johnson, was, during the taxable years here involved, the wife of J. A. Johnson, one of the general partners of the Western Contruction Company. The Western Construction Company was created as a limited partnership under the laws of the State of Washington in 1942 and again in 1943. Its certificate of formation included J. A. Johnson, George Johnson and

Albin Johnson, three brothers, as its general partners and their several adult sons and daughters as limited partners. The partnership was engaged during the taxable years here involved in the general contracting business. Prior to its organization the business had been conducted by a predecessor corporation known as Western Construction Company, Inc. In his determination of deficiencies in income, declared value excess profits, and excess profits taxes against the partnership, the Commissioner determined that the Western Construction Company, under the so-called limited partnership agreements of February 24, 1942, and June 30, 1943, constituted an association taxable as a corporation as prescribed by Section 3797(a) (3) of the Internal Revenue Code and Section 29.3797-5 of Regulations 111, and that the so-called partnership or association, rather than its individual members, was taxable on the income earned by it during the calendar years 1942 to 1945, inclusive. In the alternative, it was determined by the Commissioner that if the Western Construction Company was recognizable as a valid partnership, for Federal income tax purposes, its income was taxable entirely to its three general partners, one of whom was the husband of the respondent on review herein, rather than being taxable on a distributable basis to said general partners and the ten alleged limited partners, children of the three general partners.

The Tax Court of the United States disagreed with the Commissioner's determination and held that the Western Construction Company was a bona

fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership and that it should be so recognized for tax purposes. Accordingly, in conformity with its opinion, the Tax Court entered its decision that there are no deficiencies in income tax, declared value excess profits tax and excess profits tax for the calendar years 1942, 1943, 1944 and 1945 in respect of the partnership and, as to the respondent on review herein, Ellen M. Johnson, and her husband, J. A. Johnson, refused to hold that their three children were not taxable on their shares of the partnership income and that such shares were taxable to their father, J. A. Johnson, and his wife, the respondent herein, on a community property basis.

/s/ THERON L. CAUDLE, C.A.R.
Assistant Attorney General.

/s/ CHARLES OLIPHANT, C.A.R.
Chief Counsel, Bureau of Internal Revenue Attorneys for Petitioner on Review.

Received and Filed T.C.U.S. October 9, 1950.

[Title of Tax Court and Cause.]

T. C. Docket No. 15497

STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled

cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision that there are deficiencies in income tax for the calendar years 1943 and 1944, in the respective amounts of only $3,348.71 and $357.89, and that there is an overpayment in income tax for the calendar year 1945, in the amount of $232.81.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner on the basis that the taxpayer's husband, J. A. Johnson, was taxable upon one-third of the net income of the business conducted under the name of Western Construction Company, less the community portion of such income allocable to the taxpayer, Ellen M. Johnson, the wife of J. A. Johnson, as modified by stipulation and agreement of the parties in respect of items not now in controversy.

3. In holding and deciding that the Western Construction Company is a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership and is recognized as such for tax purposes.

4. In failing and refusing to hold and decide that the Western Construction Company, during the tax-

able years involved, was a partnership consisting only of its three general partners, and that for Federal income tax purposes the income of such partnership was taxable to the general partners and their respective spouses and that the children of the general partners should not be recognized, for Federal income tax purposes, as bona fide partners in the business conducted by the said Western Construction Company.

5. In that its opinion and its decision that, for Federal income tax purposes, the Western Construction Company is a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership is not supported by but is contrary to the evidence.

6. In that its opinion and its decision are not supported by but are contrary to the evidence.

7. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE, C.A.R.
Assistant Attorney General.

/s/ CHARLES OLIPHANT, C.A.R.
Special Attorney, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of service attached.

Received and Filed T.C.U.S., December 21, 1950.

The Tax Court of the United States

Docket No. 15498

HULDAH JOHNSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1947

Aug. 11—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 12—Copy of petition served on General Counsel.

Oct. 1—Answer filed by General Counsel.

Oct. 1—Request for hearing in Seattle filed by General Counsel.

Oct. 10—Notice issued placing proceeding on Seattle, Wash. calendar. Service of answer and request made.

1948

Mar. 23—Hearing set 5/17/48, Seattle, Wash.

May 24, 25 & 26—Hearing had before Judge Black on merits, consolidated, cases to be kept open to receive claims for refund. Respondent to file amendment to answer by 6/20/48;

1948

reply by 7/10/48. Stipulation of facts filed. Briefs due 8/15/48; replies 9/15/48.

June 15—Amendment to respondent's answer filed by General Counsel.

July 12—Transcript of hearing May 24, 1948, filed.

July 12—Transcript of hearing May 25, 1948, filed.

July 12—Transcript of hearing May 26, 1948, filed.

Aug. 9—Motion for extension to 9/1/48 to file brief filed by taxpayer. 8/10/48 Granted.

Aug. 30—Motion for extension to 9/20/48 to file both briefs filed by taxpayer. Granted.

Aug. 30—Entry of appearance of Carbery O'Shea as counsel filed.

Sept. 8—Brief filed by General Counsel.

Sept. 16—Motion for extension to Oct. 5, 1948, to file brief filed by taxpayer. Granted.

Oct. 5—Brief filed by taxpayer. Copy served.

Nov. 1—Reply brief filed by taxpayer. Copy served.

Nov. 5—Reply brief filed by General Counsel.

1950

Mar. 22—Findings of fact and opinion rendered, Black, J. Decision will be entered under rule 50. 3/23/50. Copy served.

June 1—Respondent's computation filed.

1950

June 6—Hearing set July 13/50 on respondent's computation.

July 13—Hearing had before Judge Kern on settlement, uncontested, referred to J. Black.

July 14—Decision entered, Black, J., Div. 15.

Oct. 9—Petition for review by U. S. Court of Appeals, 9th Circuit, filed by General Counsel.

Nov. 2—Proof of service filed by General Counsel, (2).

Nov. 3—Motion for an extension to Jan. 5/51 to prepare and transmit the record filed by General Counsel.

Nov. 3—Order enlarging time to Jan. 5/51 to prepare and transmit the record entered.

Dec. 21—Statement re diminution of record filed by General Counsel.

Dec. 21—Statement of points with statement of service thereon filed by General Counsel.

[Titel of Tax Court and Cause.]

Docket No. 15498

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Bur. Symbols, Seattle IT:90D; DM) dated May 29th, 1947, and as a basis for her proceeding alleges as follows:

1. The petitioner is a citizen and resident of the United States, residing at 1619 East 52nd, Seattle, Washington. The returns for the periods here involved were filed with the Collector of Internal Revenue for the Tacoma District of the State of Washington.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on May 29th, 1947.

3. The taxes in controversy are income taxes for the calendar years 1943, 1944 and 1945 and are in the total amount of $39,812.41.

4. The determination of tax set forth in the said notice of deficiency is based on the following errors:

(a) That the Commissioner erred in distributing the entire taxable income of the Western Construction Company, a limited partnership, to the three general partners, one of whom is the husband of the petitioner herein, instead of distributing the income according to the interests of the limited

partners as well as the general partners as per the returns of said limited and general partners. That the general partner, George Johnson and your petitioner are husband and wife, and as such constitute a marital community and under the community property laws of the State of Washington have made separate returns, equally dividing the community income in half, your petitioner therefore making a return of one-half of the community income.

(b) That the Commissioner erred in disallowing depreciation on personal auto of George Johnson, husband of the petitioner, travel and auto expenses, auto insurance and entertainment, to the petitioner.

(c) That the Commissioner erred in including as income to the general partners for 1945, the petitioners pro rata share of the profits of a contract known as "Boeing Alterations" not completed by the partnership until 1946. That said partnership is on a "completed contract basis" and the gross profit was included erroneously in 1945 for the partnership, amounting to a total of $7,571.12 which should not have been included in said 1945 income of said partnership.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) That prior to the taxable years above mentioned, the petitioner was the wife of George Johnson one of three general partners doing business under the name and style of Western Construction

Company who formed a limited partnership under and by vitrue of the laws of the State of Washington, taking into said limited partnership, among others, the petitioner's children, to wit: Lloyd W. Johnson, Bernice Wallin, Rachel Gustafson and Lorraine Ellingson. That said Lloyd W. Johnson, Bernice Wallin, Rachel Gustafson and Lorraine Ellingson, while a son and daughters of the petitioner were bona fide partners in said business conducted under the name of Western Construction Company, contributing additional capital and credit and/or personal services to said partnership. That said partnership was regularly and duly created as a limited partnership under the laws of the State of Washington, and that said partners, Lloyd W. Johnson, Bernice Wallin, Rachel Gustafson and Lorraine Ellingson assumed their proportionate full liability for losses, if any should occur, to the full amount of their capital investment, under the limited partnership laws of the State of Washington, and were entitled to their proportionate share of any profits. That the creation of said limited partnership was for a business purpose and that it was the intention of the general partners and of the limited partners to carry on said construction business as a partnership. That said limited partners at different times drew from said limited partnership different amounts from their share of the profits and used said amounts for their own personal use.

(b) That the Commissioner erred in disallowing depreciation on personal auto, travel and auto ex-

penses, auto insurance and entertainment. That the petitioner alleges that said automobile was used by her husband, George Johnson, in the business of Western Construction Company as an ordinary and necessary expense by the taxpayer in the activities of his business and that the agreement among the general partners provided that each general partner pay these expenses personally. Starting the first of 1945 this arrangement was changed so that the partnership paid the expenses of the cars, travel and entertainment but the partners should still provide their own cars; that the partnership owned no automobiles and that the cars of the general partners were the only cars available to carry on the business of the copartnership and that the particular cars upon which depreciation and expense were charged were used exclusively to carry on said copartnership business. That the entertainment of engineers and travel expense was also paid by each partner according to the agreement set forth above and as a regular and necessary expense of the husband of the petitioner in carrying on said copartnership business.

(c) That the Commissioner erred in including as income to the general partners for 1945, the petitioner's pro rata share of the profits of a contract known as "Boeing Alterations" not completed by the partnership until 1946. That said partnership is on a "completed contract basis" and the gross profit was included erroneously in 1945 for the partnership, amounting to a total of $7,571.12, which

should not have been included in said 1945 income of said partnership.

6. That the Commissioner, the respondent herein, did, at approximately the same time that he gave notice of deficiency, distributing the entire taxable income of the Western Construction Company to the three general partners, gave another notice of deficiency to said limited partnership as a whole alleging it to be an association and assessing said alleged association $594,735.72. That the total sum of said notices of deficiency covering the Commissioner's distributing the entire taxable income of the limited partnership to the three general partners, and the assessment against the alleged association is more than the entire income of said limited partnership during said taxable years of 1943, 1944 and 1945. That the respondent herein should be required to make an election as to which coure respondent wishes to pursue, to wit: to assess the entire taxable income of said limited partnership to the three general partners or to the limited partnership as an association—one or the other—prior to the hearing of this case upon its merits. That the Commissioner cannot in law or in equity at one and the same time distribute the income of the same entity to both the general partners and to an "association" composed of the general and limited partners.

Wherefore the petitioner prays that this Court may hear the proceeding and determine that the deficiency shown in the total amount of $39,812.41, as

due from the petitioner for the years 1943, 1944 and 1945, should be voided and eliminated and that the petitioner be found not to be indebted to the United States Government for income taxes for said years.

/s/ RALPH B. POTTS,
Attorney for Petitioner.

State of Washington,
County of King—ss.

Huldah Johnson, being first duly sworn, says that she is the petitioner above-named; that she has read the foregoing petition, or has had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

/s/ HULDAH JOHNSON.

Subscribed and sworn to before me this 30th day of July, 1947.

[Seal] /s/ LUCILLE POTTS,
Notary Public in and for the State of Washington,
Residing at Seattle.

EXHIBIT A

Treasury Department
Internal Revenue Service
Seattle 1, Washington

May 29, 1947.

Seattle Division,
305 A 1331 Third
Ave. Building,

IT:90D:DM

Mrs. Huldah Johnson,
605 Arctic Building,
Seattle 4, Washington.

Dear Mrs. Johnson:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1943, 1944, and 1945, discloses a deficiency of $39,812.41, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

With 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at is principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are

requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington for the attention of IT:90D:DM. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner,

By /s/ L. E. HALLOWELL,
Acting Internal Revenue
Agent in Charge.

DM:mts

Enclosures:
Statement
Form of Waiver

T:90D:

STATEMENT

Mrs. Huldah Johnson
605 Aretic Building
Seattle, Washington

Tax liability for the taxable years ended December 31, 1943, December 31, 1944, and December 31, 1945.

Year		
1943	Income tax	$30,745.52
1944	Income tax	2,385.74
1945	Income tax	6,681.15
	Total	$39,812.41

In making this determination of your income tax liability, careful nsideration has been given to the reports of examination dated February 5, 1946, and September 16, 1946; to your protests dated April , 1946, January 14, 1947, and February 11, 1947; and to the statements made at the conferences held on June 12, 1946, and April 14, 947.

A copy of this letter and statement has been mailed to your representative, Mr. John H. Von Harten, 1411 Fourth Avenue Building, eattle 1, Washington, in accordance with the authority contained in e power of attorney executed by you.

In the computation of your net income for each year mentioned it held that you and your spouse are each taxable upon one-sixth of e net income of the business conducted under the name of Western nstruction Co. It is held that for income tax purposes your children, oyd W. Johnson, Bernice Wallin, Lorraine Ellingson and Rachel ustafson were not bona fide partners in the business conducted under e name of Western Construction Co. during the taxable years mened.

Taxable Year Ended December 31, 1942

Adjustments to Net Income

et income as disclosed by original return		$29,515.58
nallowable deductions and additional income:		
(a) Long-term capital gain	$ 1,845.74	
(b) Business income increased	35,699.63	
(c) Personal expenses disallowed	947.69	38,493.06
		$68,008.64
dditional deductions and nontaxable income:		
(d) Contributions increased		64.66
(e) Mathematical error in rental income		5.00
et income as adjusted		$67,938.98

Explanation of Adjustments

(a) Your income is increased to reflect your one-half share of th long-term capital gain of $3,691.47 upon the exchange of communit owned capital stock of the Western Construction Co., Inc.

(b) Your income is increased to reflect your corrected share c income of the Western Construction Co. Such income is held to b community income and one-half thereof taxable to your spouse. In crease in your income is computed as follows:

One-sixth of corrected Western Construction Co. net income	$69,974.3
Reported in return	34,274.7
Increase	$35,699.6

(c) Your income is increased by the disallowance of the followin unsubstantiated items which do not constitute necessary business ex penses to you:

Depreciation on personal auto	$ 338.3
Car operating expense	173.2
Car insurance	303.7
Entertainment of engineers, etc.	600.0
Travel expense	480.0
	$ 1,895.3
Less: One-half claimed by spouse	947.7
Balance claimed and disallowed	$ 947.6

(d) Your income is decreased to allow for additional charitab contributions to be taken into account from the Western Constructio Co., as follows:

One-sixth of Western Construction Co. contributions	$ 113.1
Claimed in return	48.4
Additional allowance	$ 64.6

(e) Your income is decreased by one-half of a $10.00 mathematica error made in computing net rental loss, line 6 of the return.

Computation of Tax

Your tax liability is correctly computed under the alternative ta method as follows:

1. Net income	$67,938.9
2. Minus: Excess of net long-term capital gain over net short-term capital loss	1,845.7
3. Ordinary net income	$66,093.2
4. Less: Personal exemption	600.0

6. Balance (surtax net income)		$65,493.24
8. Less: Earned income credit		1,396.01
9. Balance subject to normal tax		$64,097.23
0. Normal tax at 6 per cent	$ 3,845.83	
1. Surtax on item 6	33,630.34	
2. Partial tax		$37,476.17
3. Plus: 50% of line 2		922.86
4. Alternative tax		$38,399.03
5. Tax liability upon 1942 income		$38,399.03

Taxable Year Ended December 31, 1943

Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
s disclosed by return	$30,216.67	$31,414.35
nallowable deductions and additional income:		
(a) Business income	29,790.19	29,790.19
(b) Personal expenses disallowed	1,484.29	1,484.29
	$61,491.15	$62,688.83
dditional deductions and nontaxable income:		
(c) Contributions increased	111.61	—0—
come as adjusted	$61,379.54	$62,688.83

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share of income of the Western Construction Co. Such income is held to be community income and one-half thereof taxable to your spouse. Increase your income is computed as follows:

ne-sixth of corrected Western Construction Co. net income	$62,443.30
eported in return	32,653.11
crease	$29,790.19

(b) Your income is increased by the disallowance of the followi unsubstantiated items which do not constitute business expenses you:

Depreciation on personal auto	$ 361
Car operating expense and travel	1,232
Car insurance	90
Entertainment	1,284
	$ 2,968
Less: One-half claimed by spouse	1,484
Claimed and disallowed	$ 1,484

(c) Your income is decreased to allow for additional charita contributions to be taken into account from the Western Constructi Co. as follows:

One-sixth of Western Construction Co. contributions	$ 208
Claimed in return	96
Additional allowance	$ 111

Computation of Income and Victory Tax

1.	Income tax net income		$61,379
2.	Less: Personal exemption		775
3.	Surtax net income		$60,604
4.	Less: Earned income credit		1,251
5.	Balance subject to normal tax		$59,352
6.	Normal tax at 6 per cent	$ 3,561.16	
7.	Surtax on item 3	30,257.13	
8.	Total income tax (item 6 plus item 7)		$33,818
10.	Balance of income tax		$33,818
11.	Victory tax net income	$62,688.83	
12.	Less: Specific exemption	624.00	
13.	Income subject to victory tax	$62,064.83	
14.	Victory tax before credit (5% of line 13)	$ 3,103.24	
15.	Less: Victory tax credit	500.00	
16.	Net victory tax		2,603

7. Net income tax and victory tax		$36,421.53
8. Income tax for 1942		$38,399.03
9. Amount of item 17 or 18 whichever is larger		$38,399.03
0. Forgiveness feature:		
(a) Amount of item 17 or 18 whichever is smaller	$36,421.53	
(b) Amount forgiven (¾ of (a))	27,316.15	
(c) Amount unforgiven		9,105.38
1. Total income and victory tax liability		$47,504.41
2. Income and victory tax liability disclosed by return, Account #6350169		16,758.89
3. Deficiency in income and victory tax		$30,745.52

Taxable Year Ended December 31, 1944

Adjustments to Net Income

Net income as disclosed by return		$10,065.73
Unallowable deductions and additional income:		
(a) Business income increased		4,275.25
(b) Long-term capital gain increased		17.43
(c) Personal expenses disallowed		1,171.32
		$15,529.73
Additional deductions and nontaxable income:		
(d) Contributions		59.58
Net income as adjusted		$15,470.15

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share of income of the Western Construction Co. Such income is held to be community income and one-half thereof taxable to your spouse. Increase in your income is computed as follows:

One-sixth of corrected Western Construction Co. net income	$16,050.49
Reported in return	11,775.24
Increase	$ 4,275.25

(b) Your income is increased to reflect your corrected share of the Western Construction Co. long-term capital gain as follows:

One-sixth of Western Construction Co. long-term capital gain	$ 34.85
Reported in return	17.42
Increase	$ 17.43

(c) Your income is increased by the disallowance of the followi unsubstantiated items which do not constitute necessary business e penses to you:

Depreciation on personal auto	$ 361.
Car operating expense	628.
Travel	730.
Entertainment	622.
	$ 2,342.
Less: One-half claimed by spouse	1,171.
Claimed and disallowed	$ 1,171.

(d) Your income is decreased to allow for additional charitab contributions to be taken into account from the Western Constructi Co. as follows:

One-sixth of Western Construction Co. contributions	$ 119.
Claimed in return	59.
Additional allowance	$ 59.

Computation of Income Tax—1944

1.	Net income	$15,470.15	
2.	Less: Surtax exemption	500.00	
3.	Surtax net income	$14,970.15	
4.	Surtax		$ 4,715.
5.	Net income	$15,470.15	
6.	Less: Normal-tax exemption	500.00	
7.	Balance subject to normal tax	$14,970.15	
8.	Normal tax at 3 per cent		449.
9.	Total income tax (item 4 plus item 8)		$ 5,165.
11.	Income tax liability		$ 5,165.
12.	Income tax liability disclosed by return, Account #9001235		2,779.
13.	Deficiency in income tax		$ 2,385.

Taxable Year Ended December 31, 1945

Adjustments to Net Income

Net income as disclosed by return		$19,279.55
Unallowable deductions and additional income:		
(a) Business income increased	$11,623.81	
(b) Long-term capital gain increased	300.22	
(c) Personal expenses disallowed	180.71	
Total		$31,384.29
Nontaxable income and additional deductions:		
(d) Interest income decreased	1,076.65	
(e) Contributions increased	100.34	
Net income as adjusted		$30,207.30

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share of income of the Western Construction Co. Such income is held to be community income and one-half thereof taxable to your spouse. Increase in your income is computed as follows:

One-sixth of corrected Western Construction Co. net income	$30,747.62
Reported in return	19,123.81
Increase	$11,623.81

(b) Your income is increased to reflect your corrected share of the Western Construction Co. long-term capital gain as follows:

One-sixth of Western Construction Co. long-term capital gain	$ 600.44
Reported in return	300.22
Increase	$ 300.22

(c) Your income is increased by the disallowance of the following unsubstantiated items which do not constitute necessary business expenses to you:

Car depreciation	$ 361.41
Claimed by spouse and disallowed	180.70
Claimed by taxpayer and disallowed	$ 180.71

(d) Your income is decreased by the elimination of so-called interest reported as having been received from your children as follows:

Boyd W. Johnson	$776.65	
Bernice Wallin	776.65	
Lorraine Ellingson	300.00	
Rachel Gustafson	300.00	$ 2,153.30
Less: One-half reported on return of spouse		1,076.65
Reduction of income		$ 1,076.65

Since the transactions under which the purported liability of th children arose has been held to be ineffectual for income tax purpose the interest entries are likewise held to be without substance and d not represent taxable income.

(e) Your income is decreased to allow for additional charitab contributions to be taken into account from the Western Constructio Co. as follows:

One-sixth of Western Construction Co. contributions	$ 200.6
Claimed in return	100.3
Additional allowance	$ 100.3

Computation of Tax

Your tax liability is correctly computed under the alternative ta method as follows:

1.	Net income	$30,207.3
2.	Minus: Excess of net long-term capital gain over net short-term capital loss	600.4
3.	Ordinary net income	$29,606.8
4.	Less: Surtax exemptions	500.0
5.	Balance (surtax net income)	$29,106.8
6.	Surtax on line 5	$12,666.2
7.	Ordinary net income	$29,606.8
8.	Less: Normal-tax exemption	500.0
9.	Balance subject to normal tax	$29,106.8
10.	Normal tax at 3 per cent	$ 873.2
11.	Partial tax (sum of lines 6 and 10)	$13,539.4
12.	Plus: 50% of line 2	300.2
13.	Alternative tax	$13,839.6
14.	Correct tax liability	$13,839.6
15.	Disclosed by return Acct. #9001585	7,158.5
16.	Deficiency	$ 6,681.1

Received and Filed T.C.U.S. August 11, 1947.

[Title of Tax Court and Cause.]

Docket No. 15498

ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, alleges and denies as follows:

1. Admits the allegations contained in paragragh 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4(a). Admits that George Johnson and the petitioner herein are husband and wife and as such constitute a marital community under the community property laws of the State of Washington. Admits that for the taxable years involved in this proceeding, petitioner and her husband have made separate returns purporting to divide their income equally on a community property basis for Federal tax purposes. Denies the remaining allegations of error and of fact contained in subparagraph (a) of paragraph 4 of the petition.

4(b) and (c). Denies the allegations of error and of fact contained in subparagraphs (b) and (c) of paragraph 4 of the petition.

5(a). Admits that petitioner is the wife of George Johnson, one of three alleged general partners doing business under the name and style of Western Construction Company, who in 1942 and 1943, purported to enter into certain limited partnerships and, among others, pretended to take into said business, as limited partners, petitioner's children, to wit: Lloyd W. Johnson, Bernice Wallin, Rachel Gustafson, and Lorraine Ellingson. Denies each and every other material allegation contained in subparagraph (a) of paragraph 5 of the petition.

5(b) and (c). Denies each and every material allegation of error and of fact contained in subparagraphs (b) and (c) of paragraph 5 of the petition.

6. Admits that at approximately the same time as respondent issued the notice of deficiency in this proceeding determining the portion of the income of the Western Construction Company, which is includible, for Federal tax purposes, in the return of this petitioner for the years involved, the Commissioner also issued a notice of deficiency to the Western Construction Company asserting against it deficiencies in Federal income, declared value excess profits taxes and excess profits taxes on the basis that it is an association taxable as a corporation under the Federal revenue laws for the taxable years 1942 to 1945 inclusive. Alleges that the aggregate of the deficiencies so asserted against the said Western Construction Company, for the years stated, amounts to $728,832.16 instead of $594,735.72, as alleged by petitioner. Denies each and

every other material allegation contained in paragraph 6 of the petition.

7. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied, and that the Commissioner's determination of deficiencies be approved.

/s/ CHARLES OLIPHANT, W.H.P.
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel,

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Received and Filed T.C.U.S., October 1, 1947.

[Title of Tax Court and Cause.]

Docket No. 15498

AMENDMENT TO RESPONDENT'S ANSWER

Now, comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, in accord-

ance with Rule 17 of the Court's Rules of Practice and pursuant to oral motion on behalf of respondent which was granted by the Honorable Eugene Black, Judge of the Tax Court of the United States, at the hearing of this proceeding at Seattle, Washington, under date of May 26, 1948, by way of amendment to respondent's answer heretofore filed in the above-entitled cause and in order to conform his answer to the proof in the case, respectfully alleges and pleads, in the alternative, as follows:

8. In the event the Court should hold and determine that the limited partnership agreement with respect to Western Construction Company, which was executed February 24, 1942, and purporting to be effective as of January 2, 1942, should be recognized and given effect for Federal tax purposes as to the so-called limited partners, rather than taxing the entire partnership income to the general partners (and their spouses), then:

(a). The three equal general partners, J. A. Johnson, George J. Johnson and Albin Johnson are subject to tax with respect to one-half of the distributive partnership income (1/6 to each general partner) for the period January 2, 1942, to June 30, 1943 (the latter being the effective date of the second limited partnership agreement), instead of 45/105ths thereof (15/105ths as to each general partner) for the period during which the first limited partnership agreement was in effect, as reported in the individual income tax returns of said general partners and their spouses for the taxable years 1942 and 1943.

(b). Respondent hereby makes claim to any increase in the deficiency heretofore determined with respect to this petitioner which may result, as to each of the taxable years 1942 and 1943, by taxing each of the general partners (and his spouse) on 1/6 of the partnership income rather than 15/105ths thereof for the period January 2, 1942 to June 30, 1943.

(c). Effect may be given to respondent's alternative contention herein under a Rule 50 computation to be later submitted, in the event the decision of the Court with respect to the issues presented should require it, inasmuch as a Rule 50 computation will be necessary in any event in order to give effect to certain stipulations and concessions made by the parties at the hearing as to adjustments of income for the years 1942 and 1943.

Wherefore, it is prayed that petitioner's appeal be denied and that respondent's determination be sustained.

/s/ CHARLES OLIPHANT, W.H.P.
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Received and Filed T.C.U.S., June 15, 1948.

Served June 17, 1948.

The Tax Court of the United States, Washington

Docket No. 15498

HULDAH JOHNSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court as set forth in its Findings of Fact and Opinion promulgated March 22, 1950, the respondent herein filed a computation on June 1, 1950, which was not contested by petitioner when called for Hearing July 13, 1950, now therefore, it is

Ordered and Decided: That there are deficiencies in income tax for the calendar years 1943 and 1944, in the respective amounts of $3,650.23 and $339.85; and that there is an overpayment in income tax for the calendar year 1945, in the amount of $228.79, which amount was paid within two years before the mailing of the notice of deficiency.

[Seal] /s/ EUGENE BLACK,
Judge.

Entered July 14, 1950.

Served July 14, 1950.

In the United States Court of Appeals
for the Ninth Circuit
Docket No. 15498

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

HULDAH JOHNSON,
Respondent on Review,

PETITION FOR REVIEW

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on July 14, 1950, that there are deficiencies for the calendar years 1943 and 1944 in the respective amounts of $3,650.23 and $339.85, and that there is an overpayment for the calendar year 1945 in the amount of $228.79, in respect of the Federal income tax liability of Huldah Johnson, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Huldah Johnson, is a citizen of the United States, residing at 1619 East 52nd Street, Seattle, Washington, and having an office address at 605 Arctic Building, Seattle, Washington. Respondent filed her Federal income tax returns for the years 1943, 1944 and 1945, the tax-

able years here involved, with the Collector of internal Revenue for the District of Washington, whose office is located in Tacoma, Washington, and within the jurisdiction of the United States Court of Appeals for the Ninth Circuit where this review is sought.

Nature of Controversy

The respondent on review, Huldah Johnson, was, during the taxable yeras here involved, the wife of George Johnson, one of the general partners of the Western Construction Company. The Western Construction Company was created as a limited partnership under the laws of the State of Washington in 1942 and again in 1943. Its certificate of formation included J. A. Johnson, George Johnson and Albin Johnson, three brothers, as its general partners and their several adult sons and daughters as limited partners. The partnership was engaged during the taxable years here involved in the general contracting business. Prior to its organization the business had been conducted by a predecessor corporation known as Western Construction Company, Inc. In his determination of deficiencies in income, declared value excess profits, and excess profits taxes against the partnership, the Commissioner determined that the Western Construction Company, under the so-called limited partnership agreements of February 24, 1942 and June 30, 1943, constituted an association taxable as a corporation as prescribed by Section 3797(a)(3) of the Internal Revenue Code and Section 29.3797-5 of Regulations 111, and that the so-called partnership or

association, rather than its individual members. was taxable on the income earned by it during the calendar years 1942 to 1945, inclusive. In the alternative, it was determined by the Commissioner that if the Western Construction Company was recognizable as a valid partnership, for Federal income tax purposes, its income was taxable entirely to its three general partners, one of whom was the husband of the respondent on review herein, rather than being taxable on a distributable basis to said general partners and the ten alleged limited partners, children of the three general partners.

The tax Court of the United States disagreed with the Commissioner's determination and held that the Western Construction Company was a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership and that it should be so recognized for tax purposes. Accordingly, in conformity with its opinion, the Tax Court entered its decision that there are not deficiencies in income tax, declared value excess profits tax, and excess profits tax for the calendar years 1942, 1943, 1944 and 1945 in respect of the partnership and, as to the respondent on review herein, Huldah Johnson, and her husband George Johnson, refused to hold that their four children were not taxable on their shares of the partnership income and that such shares were taxable shares of the partnership income and that such to their father,

George Johnson, and his wife, the respondent herein, on a community property basis.

/s/ THERON L. CAUDLE, CWR
Assistant Attorney General.

/s/ CHARLES OLIPHANT, CWR
Chief Counsel,
Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Received and Filed T. C. U. S., October 9, 1950.

[Court of Appeals and Cause.]

T. C. Docket No. 15498

STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision that there are deficiencies in income tax for the calendar years 1943 and 1944 in the respective amounts of only $3,650.23 and $339.85, and that there is an overpayment in income tax for the calendar year 1945 in the amount of $228.79.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner on the basis that the taxpayer's husband, George J. Johnson, was taxable upon one-third of the net income of the business conducted under the name of Western Construction Company, less the community portion of such income allocable to the taxpayer, Huldah Johnson, the wife of George J. Johnson, as modified by stipulation and agreement of the parties in respect of items not now in controversy.

3. In holding and deciding that the Western Construction Company is a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership and is recognized as such for tax purposes.

4. In failing and refusing to hold and decide that the Western Construction Company, during the taxable years involved, was a partnership consisting only of its three general partners, and that for Federal income tax purposes the income of such partnership was taxable to the general partners and their respective spouses and that the children of the general partners should not be recognized, for Federal income tax purposes, as bona fide partners in the business conducted by the said Western Construction Company.

5. In that its opinion and its decision that, for Federal income tax purposes, the Western Con-

struction Company is a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership is not supported by but is contrary to the evidence.

6. In that its opinion and its decision are not supported by but are contrary to the evidence.

7. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE, CWR
Assistant Attorney General.

/s/ CHARLES OLIPHANT, CWR
Chief Counsel Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of service attached.

Received and Filed T. C. U. S., December 21, 1950.

The Tax Court of the United States

Docket No. 15499

GEORGE J. JOHNSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1947

Aug. 11—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 12—Copy of petition served on General Counsel.

Oct. 1—Answer filed by General Counsel.

Oct. 1—Request for hearing in Seattle, Wash., filed by General Counsel.

Oct. 10—Notice issued placing proceeding on Seattle, Wash. calendar. Service of answer and request made.

1948

Mar. 23—Hearing set 5/17/48, Seattle, Wash.

May 24,
25 & 26—Hearing had before Judge Black on merits. Consolidated. Cases to be kept open to receive claim for refund. Respondent to file amendment to answer by

1948

6/20/48; reply due 7/10/48. Stipulation of facts filed. Briefs due 8/15/48; replies 9/15/48.

June 15—Amendment to respondent's answer filed by General Counsel.

July 12—Transcript of hearing May 24, 1948 filed.

July 12—Transcript of hearing May 25, 1948 filed.

July 12—Transcript of hearing May 26, 1948 filed.

Aug. 9—Motion for extension to 9/1/48 to file brief filed by taxpayer. 8/10/48 Granted.

Aug. 30—Motion for extension to 9/20/48 to file both briefs filed by taxpayer 8/31/48 Granted.

Aug. 30—Entry of appearance of Carbery O'Shea as counsel filed.

Sept. 8—Brief filed by General Counsel.

Sept. 16—Motion for extension to Oct. 5, 1948 to file brief filed by taxpayer. Granted.

Oct. 5—Brief filed by taxpayer. Copy served.

Nov. 1—Reply brief filed by taxpayer. Copy served.

Nov. 5—Reply brief filed by General Counsel.

1950

Mar. 22—Findings of fact and opinion rendered, Black, J. Decision will be entered under rule 50. 3/23/50. Copy served.

1950

June 1—Respondent's computation filed.

June 6—Hearing set July 13/50 on respondent's computation.

July 13—Hearing had before Judge Kern on settlement, uncontested, referred to J. Black.

July 14—Decision entered, Black, J., Div. 15.

Oct. 9—Petition for review by U. S. Court of Appeals, 9th Circuit, filed by General Counsel.

Nov. 2—Proof of service filed by General Counsel. (2)

Nov. 2—Affidavit of service of petition for review filed.

Nov. 3—Motion for extension to Jan. 5, 1951 to prepare and transmit the record filed by General Counsel.

Nov. 3—Order enlarging time to Jan. 5, 1951 to prepare and transmit the record entered.

Dec. 21—Statement re diminution of record filed by General Counsel.

Dec 21—Statement of points with statement of service thereon filed by General Counsel.

[Title of Court and Cause.]

Docket No. 15499

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Bur. Symbols, Seattle IT:90D:DM) dated May 29, 1947, and as a basis for his proceeding alleges as follows:

1. The petitioner is a citizen and resident of the United States, residing at 4560-55th Avenue Northeast, Seattle, Washington. The returns for the periods here involved were filed with the Collector of Internal Revenue for the Tacoma District of the State of Washington.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on May 29, 1947.

3. The taxes in controversy are income taxes for the calendar years 1943, 1944 and 1945 and are in the total amount of $38,828.50.

4. The determination of tax set forth in the said notice of deficiency is based on the following errors:

(a) That the Commissioner erred in distributing the entire taxable income of the Western Construction Company, a limited partnership, to the three general partners of which the petitioner herein is one, instead of distributing the income

according to the interests of the limited partners as well as the general partners as per the returns of said limited and general partners.

(b) That the Commissioner erred in disallowing depreciation on personal auto, travel and auto expenses, auto insurance and entertainment, to the petitioner.

(c) That the Commissioner erred in including as income to the general partners for 1945, the petitioner's pro rata share of the profits of a contract known as "Boeing Alterations" not completed by the partnership until 1946. That said partnership is on a "completed contract basis" and the gross profit was included erroneously in 1945 for the partnership, amounting to a total of $7,571.12, which should not have been included in said 1945 income of said partnership.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) That prior to the taxable years above mentioned the petitioner as one of three general partners doing business under the name and style of Western Construction Company, formed a limited partnership under and by virtue of the laws of the State of Washington, taking into said limited partnership, among others, the petitioner's children, to-wit: Lloyd W. Johnson, Bernice Wallin, Rachel Gustafson and Lorraine Ellingson. That said Lloyd W. Johnson, Bernice Wallin, Rachel Gustafson and Lorraine Ellingson, while a son and daughters of the petitioner were bona fide partners in said busi-

ness conducted under the name of Western Construction Company, contributing additional capital and credit and/or personal services to said partnership. That said partnership was regularly and duly created as a limited partnership under the laws of the State of Washington and that said partners, Lloyd W. Johnson, Bernice Wallin, Rachel Gustafson and Lorraine Ellingson assumed their proportionate full liability for losses, if any should occur, to the full amount of their capital investment under the limited partnership laws of the State of Washington, and were entitled to their proportionate share of any profits. That the creation of said limited partnership was for a business purpose and that it was the intention of the general partners and of the limited partners to carry on said construction business as a partnership. That said limited partners at different times drew from said limited partnership different amounts from their share of the profits and used said amounts for their own personal use.

(b) That the Commissioner erred in disallowing depreciation on personal auto, travel and auto expenses, auto insurance and entertainment. That the petitioner alleges that said automobile was used in the business of Western Construction Company as an ordinary and necessary expense by the taxpayer in the activities of his business and that the agreement among the general partners provided that each general partner pay these expenses personally. Starting the first of 1945 this arrangement was changed so that the partnership paid the ex-

penses of the cars, travel and entertainment but the partners should still provide their own cars; that the partnership owned no automobiles and that the cars of the general partners were the only cars available to carry on the business of the copartnership and that the particular cars upon which depreciation and expense were charged were used exclusively to carry on said copartnership business. That the entertainment of engineers and travel expense was also paid by each partner according to the agreement set forth above and as a regular and necessary expense of the petitioner in carrying on said copartnership business.

(c) That the Commissioner erred in including as income to the general partners for 1945, the petitioner's pro rata share of the profits of a contract known as "Boeing Alterations" not completed by the partnership until 1946. That said partnership is on a "completed contract basis" and the gross profits was included erroneously in 1945 for the partnership, amounting to a total of $7,571.12. which should not have been included in said 1945 income of said partnership.

6. That the Commissioner, the respondent herein, did, at approximately the same time that he gave notice of deficiency, distributing the entire taxable income of the Western Construction Company to the three general partners, gave another notice of deficiency to said limited partnership as a whole alleging it to be an association and assessing said alleged association $594,735.72. That the total

sum of said notices of deficiency, covering the Commissioner's distributing the entire taxable income of the limited partnership to the three general partners, and the assessment against the alleged association is more than the entire income of said limited partnership during said taxable years of 1943, 1944 and 1945. That the respondent herein should be required to make an election as to which course respondent wishes to pursue, to-wit: to assess the entire taxable income of said limited partnership to the three general partners or to the limited partnership as an association—one or the other—prior to the hearing of this case upon its merits. That the Commissioner cannot in law or in equity at one and the same time distribute the income of the same entity to both the general partners and to an "association" composed of the general and limited partners.

Wherefore the petitioner prays that this Court may hear the proceeding and determine that the deficiency shown in the total amount of $38,828.50 as due from the petitioner for the years 1943, 1944 and 1945 should be voided and eliminated and that the petitioner be found not to be indebted to the United States Government for income taxes for said years.

/s/ RALPH B. POTTS,
Attorney for Petitioner.

State of Washington
County of King—ss.

George J. Johnson, being duly sworn, says that he is the petitioner above-named; that he has read the foregoing petition, or has had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ GEORGE J. JOHNSON.

Subscribed and sworn to before me this 30th day of July, 1947.

[Seal] /s/ LUCILLE POTTS,
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT A

Treasury Department
Internal Revenue Service
Seattle 1, Washington

May 29, 1947

Seattle Division
305 A 1331 Third Avenue

IT:90D:DM

Mr. George J. Johnson
605 Arctic Building
Seattle 4, Washington

Dear Mr. Johnson:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1943, 1944 and 1945 discloses a deficiency of $38,828.50, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward

it to the Internal Revenue Agent in Charge, Seattle 1, Washington for the attention of IT:90D:DM. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,
JOSEPH D. NUNAN, JR.,
Commissioner,

By /s/ L. E. HALLOWELL,
Acting Internal Revenue
Agent in Charge.

DM:mts

Enclosures:
Statement
Form of Waiver

IT:90D:DM

STATEMENT

Mr. George J. Johnson
605 Arctic Building
Seattle, Washington

Tax liability for the taxable years ended December 31, 1943, December 31, 1944, and December 31, 1945.

Year		Deficiency
1943	Income tax	$29,872.23
1944	Income tax	2,320.75
1945	Income tax	6,635.52
	Total	$38,828.50

In making this determination of your income tax liability, carefu consideration has been given to the reports of examination dated Feb ruary 5, 1946, and September 26, 1946; to your protests dated Apri 17, 1946, January 14, 1947, and February 11, 1947; and to the state ments made at the conferences held on June 12, 1946, and April 14 1947.

A copy of this letter and statement has been mailed to your repre sentative, Mr. John H. Von Harten, 1411 Fourth Avenue Building Seattle 1, Washington, in accordance with the authority contained i the power of attorney executed by you.

In the computation of your net income for each year mentioned i is held that you and your spouse are each taxable upon one-sixth of th net income of the business conducted under the name of Western Con struction Co. It is held that for income tax purposes your children Lloyd W. Johnson, Bernice Wallin, Lorraine Ellingson and Rache Gustafson were not bona fide partners in the business conducted unde the name of Western Construction Co. during the taxable years men tioned.

Taxable Year Ended December 31, 1942

Adjustments to Net Income

Net income as disclosed by original return		$29,515.5
Unallowable deductions and additional income:		
(a) Long-term capital gain	$ 1,845.74	
(b) Business income increased	35,699.63	
(c) Personal expenses disallowed	947.69	38,493.0
		$68,008.6
Additional deductions and nontaxable income:		
(d) Contributions increased		64.6
(e) Mathematical error in rental income		5.0
Net income as adjusted		$67,938.9

Explanation of Adjustments

(a) Your income is increased to reflect your one-half share of the ng-term capital gain of $3,691.47 upon the exchange of community wned capital stock of the Western Construction Co., Inc.

(b) Your income is increased to reflect your corrected share of in- me of the Western Construction Co. Such income is held to be com- unity income and one-half thereof taxable to your spouse. Increase your income is computed as follows:

ne-sixth of corrected Western Construction Co. net income	$69,974.35
eported in return	34,274.72
ncrease	$35,699.63

(c) Your income is increased by the disallowance of the following nsubstantiated items which do not constitute necessary business ex- enses to you:

epreciation on personal auto	$ 338.39
ar operating expense	173.22
ar insurance	303.78
ntertainment of engineers, etc.	600.00
avel expense	480.00
	$ 1,895.39
ss: One-half claimed by spouse	947.70
lance claimed and disallowed	$ 947.69

(d) Your income is decreased to allow for additional charitable ntributions to be taken into account from the Western Construction ., as follows:

ne-sixth of Western Construction Co. contributions	$ 113.16
aimed in return	48.49
dditional allowance	$ 64.66

(e) Your income is decreased by one-half of a $10.00 mathematical ror made in computing net rental loss, line 6 of the return.

Computation of Tax

Your tax liability is correctly computed under the alternative tax thod as follows:

Net income		$67,938.98
Minus: Excess of net long-term capital gain over net short-term capital loss		1,845.74
Ordinary net income		$66,093.24
Less: Personal exemption	$ 600.00	
Credit for dependents	350.00	950.00
Balance (surtax net income)		$65,143.24
Less: Earned income credit		1,396.01

9. Balance subject to normal tax		$63,747.2
10. Normal tax at 6 per cent	$ 3,824.83	
11. Surtax on item 6	33,388.84	
12. Partial tax		$37,213.6
13. Plus: 50% of line 2		922.8
14. Alternative tax		$38,136.5
15. Tax liability upon 1942 income		$38,136.5

Taxable Year Ended December 31, 1943

Adjustments to Net Income

	Income Tax Net Income	Victory Ta Net Incom
As disclosed by return	$30,216.67	$31,414.3
Unallowable deductions and additional income:		
(a) Business income	29,790.19	29,790.1
(b) Personal expenses disallowed	1,484.29	1,484.2
	$61,491.15	$62,688.8
Additional deductions and nontaxable income:		
(c) Contributions increased	111.61	—0—
Income as adjusted	$61,379.54	$62,688.8

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share income of the Western Construction Co. Such income is held to community income and one-half thereof taxable to your spouse. I crease in your income is computed as follows:

One-sixth of corrected Western Construction Co. net income	$62,443.
Reported in return	32,653.
Increase	$29,790.

(b) Your income is increased by the disallowance of the followi unsubstantiated items which do not constitute necessary business e penses to you:

Depreciation on personal auto	$ 361.
Car operating expense and travel	1,232.
Car insurance	90.
Entertainment	1,284.
	$ 2,968.
Less: One-half claimed by spouse	1,484.
Claimed and disallowed	$ 1,484.

(c) Your income is decreased to allow for additional charitable ontributions to be taken into account from the Western Construction o. as follows:

ne-sixth of Western Construction Co. contributions	$ 208.33
laimed in return	96.72
dditional allowance	$ 111.61

Computation of Income and Victory Tax

1.	Income tax net income		$61,379.54
2.	Less: Personal exemption	$ 425.00	
	Credit for dependents	350.00	775.00
3.	Surtax net income		$60,604.54
4.	Less: Earned income credit		1,251.81
5.	Balance subject to normal tax		$59,352.73
6.	Normal tax at 6 per cent	$ 3,561.16	
7.	Surtax on item 3	30,257.13	
8.	Total income tax (item 6 plus item 7)		$33,818.29
9.	Balance of income tax		$33,818.29
10.	Victory tax net income	$62,688.83	
11.	Less: Specific exemption	624.00	
12.	Income subject to victory tax	$62,064.83	
13.	Victory tax before credit (5% of line 13)	$ 3,103.24	
14.	Less: Victory tax credit	600.00	
15.	Net victory tax		2,503.24
16.	Net income tax and victory tax		$36,321.53
17.	Income tax for 1942		$38,136.54
18.	Amount of item 17 or 18 whichever is larger		$38,136.54
19.	Forgiveness feature:		
	(a) Amount of item 17 or 18 whichever is smaller	$36,321.53	
	(b) Amount forgiven (¾ of (a))	27,241.15	
	(c) Amount unforgiven		9,080.38
20.	Total income and victory tax liability		$47,216.92
21.	Income and victory tax liability disclosed by return, Account #6350170		17,344.69
22.	Deficiency in income and victory tax		$29,872.23

Taxable Year Ended December 31, 1944

Adjustments to Net Income

Net income as disclosed by return	$20,065.7
Unallowable deductions and additional income:	
(a) Business income increased	4,272.8
(b) Long-term capital gain increased	17.5
(c) Personal expenses disallowed	1,117.9
Total	$25,529.7
Additional deductions and nontaxable income:	
(d) Contributions	50.0
Net income as adjusted	$25,479.7

Explanation of Adjustments

(a) Your income is increased to reflect your increased share of income of the Western Construction Co. Such income is held to be community income and one-half thereof taxable to your spouse. Increase in your income is computed as follows:

One-sixth of increased Western Construction Co. net income	$26,050.9
Reported in return	21,778.1
Increase	$ 4,272.8

(b) Your income is increased to reflect your increased share of the Western Construction Co. long-term capital gain as follows:

One-sixth of Western Construction Co. long-term capital gain	$ 34.9
Reported in return	17.4
Increase	$ 17.5

(c) Your income is increased by the disallowance of the following unsubstantiated items which do not constitute necessary business expenses to you:

Depreciation on personal cars	$ 302.-
Car operating expenses	225.-
Travel	750.-
Entertainment	90.-
	$ 1,367.-
Less: One-half claimed by spouse	249.1
Claimed and disallowed	$ 1,117.9

(d) Your income is decreased to allow for additional charitable contributions to be taken into income from the Western Construction Co., as follows:

One-sixth of Western Construction Co. contributions	$ 100.-
Claimed in return	50.-
Additional allowance	$ 50

Computation of Income Tax—1944

1. Net income	$15,470.15	
2. Less: Surtax exemption	1,000.00	
3. Surtax net income	$14,470.15	
4. Surtax		$ 4,480.98
5. Net income	$15,470.15	
6. Less: Normal-tax exemption	500.00	
7. Balance subject to normal tax	$14,970.15	
8. Normal tax at 3 per cent		449.10
9. Total income tax (item 4 plus item 8)		$ 4,930.08
10. Income tax liability		$ 4,930.08
11. Income tax liability disclosed by return, Account #9002364		2,609.33
12. Deficiency in income tax		$ 2,320.75

Taxable Year Ended December 31, 1945

Adjustments to Net Income

Net income as disclosed by return		$19,279.55
Disallowable deductions and additional income:		
(a) Business income increased		11,623.81
(b) Long-term capital gain increased		300.22
(c) Personal expenses disallowed		180.71
Total		$31,384.29
Nontaxable income and additional deductions:		
(d) Interest income decreased		1,076.65
(e) Contributions increased		100.34
Net income as adjusted		$30,207.30

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share o income of the Western Construction Co. Such income is held to b community income and one-half thereof taxable to your spouse. In crease in your income is computed as follows:

One-sixth of corrected Western Construction Co. net income	$30,747.6
Reported in return	19,123.8
Increase	$11,623.8

(b) Your income is increased to reflect your corrected share of th Western Construction Co. long-term capital gain as follows:

One-sixth of Western Construction Co. long-term capital gain	$ 600.4
Reported in return	300.2
Increase	$ 300.2

(c) Your income is increased by the disallowance of the followin unsubstantiated items which do not constitute necessary business ex penses to you:

Car depreciation	$ 361.4
Claimed by spouse and disallowed	180.7
Claimed by taxpayer and disallowed	$ 180.7

(d) Your income is decreased by the elimination of so-called in terest reported as having been received from your children as follows

Lloyd W. Johnson	$776.65	
Bernice Wallin	776.65	
Lorraine Ellingson	300.00	
Rachel Gustafson	300.00	$ 2,153.3
Less: One-half reported on return of spouse		1,076.6
Reduction of income		$ 1,076.6

Since the transactions under which the purported liability of th children arose has been held to be ineffectual for income tax purpose the interest entries are likewise held to be without substance and d not represent taxable income.

(e) Your income is decreased to allow for additional charitab contributions to be taken into account from the Western Constructio Co. as follows:

One-sixth of Western Construction Co. contributions	$ 200.6
Claimed in return	100.3
Additional allowance	$ 100.3

Computation of Tax

Your tax liability is correctly computed under the alternative tax method as follows:

1.	Net income	$30,207.30
2.	Minus: Excess of net long-term capital gain over net short-term capital loss	600.44
3.	Ordinary net income	$29,606.86
4.	Less: Surtax exemptions	1,000.00
5.	Balance (surtax net income)	$28,606.86
6.	Surtax on line 5	$12,356.25
7.	Ordinary net income	$29,606.86
8.	Less: Normal-tax exemption	500.00
9.	Balance subject to normal tax	$29,106.86
10.	Normal tax at 3 per cent	$ 873.21
11.	Partial tax (sum of lines 6 and 10)	$13,229.46
12.	Plus: 50% of line 2	300.22
13.	Alternative tax	$13,529.68
14.	Total tax liability	$13,529.68
15.	Disclosed by return, Account #3011863	6,894.16
16.	Deficiency in income tax	$ 6,635.52

Received and Filed T.C.U.S. August 11, 1947.

[Title of Tax Court and Cause.]

Docket No. 15499

ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, alleges and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4(a), (b) and (c). Denies that in determining the deficiencies asserted in the statutory notice the respondent committed any errors, and specifically denies the allegations of error set forth in subparagraphs (a), (b) and (c) of paragraph 4 of the petition.

5(a). Admits that petitioner, as one of three alleged general partners, doing business under the name and style of the Western Construction Company, in 1942 and 1943 purported to enter into certain limited partnerships and, among others, pretended to take into said business, as limited partners, petitioner's children, to wit: Lloyd W. Johnson, Bernice Wallin, Rachel Gustafson and Lorraine Ellingson. Denies each and every other material allegation

contained in subparagraph (a) of paragraph 5 of the petition.

5(b) and (c). Denies each and every allegation of error and of fact contained in subparagraphs (b) and (c) of paragraph 5 of the petition.

6. Admits that at approximately the same time as respondent issued the notice of deficiency in this proceeding determining the portion of the income of the Western Construction Company which is includible, for Federal tax purposes, in the return of this petitioner for the years involved, the Commissioner also issued a notice of deficiency to the Western Construction Company asserting against it deficiencies in Federal income, declared value excess profits taxes and excess profits taxes on the basis that it is an association taxable as a corporation under the Federal revenue laws for the taxable years 1942 to 1945 inclusive. Alleges that the aggregate of the deficiencies so asserted against the said Western Construction Company, for the years stated, amounts to $728,832.16 instead of $594,735.72 as alleged by petitioner. Denies each and every other material allegation contained in paragraph 6 of the petition.

7. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's ap-

peal be denied, and that the Commissioner's determination of deficiencies be approved.

/s/ CHARLES OLIPHANT, WHP
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:
B. H. NEBLETT,
Division Counsel.

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Received and filed T.C.U.S. October 1, 1947.

[Title of Tax Court and Cause.]

Docket No. 15499

AMENDMENT TO RESPONDENT'S ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, in accordance with Rule 17 of the Court's Rules of Practice and pursuant to oral motion on behalf of respondent which was granted by the Honorable Eugene Black, Judge of the Tax Court of the United States, at the hearing of his proceeding at Seattle, Washington, under date of May 26, 1948, by way of amendment to respondent's answer heretofore filed in the above-entitled cause and in order to conform his answer

to the proof in the case, respectfully alleges and pleads, in the alternative, as follows:

8. In the event the Court should hold and determine that the limited partnership agreement with respect to Western Construction Company, which was executed February 24, 1942, and purporting to be effective as of January 2, 1942, should be recognized and given effect for Federal tax purposes as to the so-called limited partners, rather than taxing the entire partnership income to the general partners (and their spouses), then:

(a). The three equal general partners, J. A. Johnson, George J. Johnson, and Albin Johnson, are subject to tax with respect to one-half of the distributive partnership income (1/6 to each general partner) for the period January 2, 1942, to June 30, 1943 (the latter being the effective date of the second limited partnership agreement), instead of 45/105ths thereof (15/105ths as to each general partner) for the period during which the first limited partnership agreement was in effect, as reported in the individual income tax returns of said general partners and their spouses for the taxable years 1942 and 1943.

(b). Respondent hereby makes claim to any increase in the deficiency heretofore determined with respect to this petitioner which may result, as to each of the taxable years 1942 and 1943, by taxing each of the general partners (and his spouse) on 1/6 of the partnership income rather than 15/105ths

thereof for the period January 2, 1942 to June 30, 1943.

(c). Effect may be given to respondent's alternative contention herein under a Rule 50 computation to be later submitted, in the event the decision of the Court with respect to the issues presented should require it, inasmuch as a Rule 50 computation will be necessary in any event in order to give effect to certain stipulations and concessions made by the parties at the hearing as to adjustments of income for the years 1942 and 1943.

Wherefore, it is prayed that petitioner's appeal be denied and that respondent's determination be sustained.

/s/ CHARLES OLIPHANT, WHP
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Received and Filed T.C.U.S. June 15, 1948.

Served June 17, 1948.

The Tax Court of the United States
Washington

Docket No. 15499

GEORGE J. JOHNSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court as set forth in its Findings of Fact and Opinion promulgated March 22, 1950, the respondent herein filed a computation on June 1, 1950, which was not contested by petitioner when called for hearing July 13, 1950, now therefore, it is

Ordered and Decided: that there are deficiencies in income tax for the calendar years 1943 and 1944 in the respective amounts of $2,815.43 and $322.38; and that there is an overpayment in income tax for the calendar year of 1945 in the amount of $216.54, which amount was paid within two years before the mailing of the notice of deficiency.

[Seal]: /s/ EUGENE BLACK,
Judge.

Entered July 14, 1950.

Served July 14, 1950.

In the United States Court of Appeals
For the Ninth Circuit

T. C. Docket No. 15499

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

GEORGE J. JOHNSON,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on July 14, 1950, that there are deficiencies for the calendar years 1943 and 1944 in the respective amounts of $2,815.43 and $322.38, and that there is an overpayment for the calendar year 1945 in the amount of $216.54, in respect of the Federal income tax liability of George J. Johnson, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, George J. Johnson, is a citizen of the United States, residing at 4560 55th Avenue Northeast, Seattle, Washington, and

having an office address at 605 Arctic Building, Seattle, Washington. Respondent filed his Federal income tax returns for the years 1943, 1944 and 1945, the taxable years here involved, with the Collector of Internal Revenue for the District of Washington, whose office is located in Tacoma, Washington, and within the jurisdiction of the United States Court of Appeals for the Ninth Circuit where this review is sought.

Nature of Controversy

The respondent on review, George J. Johnson, was, during the taxable years here involved, one of the general partners of the Western Construction Company. The Western Construction Company was created as a limited partnership under the laws of the State of Washington in 1942 and again in 1943. Its certificate of formation included J. A. Johnson, George Johnson and Albin Johnson, three brothers, as its general partners and their several adult sons and daughters as limited partners. The partnership was engaged during the taxable years here involved in the general contracting business. Prior to its organization the business had been conducted by a predecessor corporation known as Western Construction Company, Inc. In his determination of deficiencies in income, declared value excess profits, and excess profits taxes against the partnership, the Commissioner determined that the Western Construction Company, under the so-called limited partnership agreements of February 24,

1942, and June 30, 1943, constituted an association taxable as a corporation as prescribed by Section 3797(a)(3) of the Internal Revenue Code and Section 29.3797-5 of Regulations 111, and that the so-called partnership or association, rather than its individual members, was taxable on the income earned by it during the calendar years 1942 to 1945, inclusive. In the alternative, it was determined by the Commissioner that if the Western Construction Company was recognizable as a valid partnership, for Federal income tax purposes, its income was taxable entirely to its three general partners, one of whom was the respondent on review herein, rather than being taxable on a distributable basis to said general partners and the ten alleged limited partners, children of the three general partners.

The Tax Court of the United States disagreed with the Commissioner's determination and held that the Western Construction Company was a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership and that it should be so recognized for tax purposes. Accordingly, in conformity with its opinion, the Tax Court entered its decision that there are no deficiencies in income tax, declared value excess profits tax, and excess profits tax for the calendar years 1942, 1943, 1944 and 1945 in respect of the partnership and, as to the respondent on review herein, George J. Johnson, refused to hold that his four children were not taxable on their shares

of the partnership income and that such shares were taxable to their father, George Johnson, [George J. Johnson] the respondent herein.

/s/ THERON L. CAUDLE,
Assistant Attorney General.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Received and Filed T.C.U.S. October 9, 1950.

[Title of Court of Appeals and Cause.]

T. C. Docket No. 15499

STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision that there are deficiencies in income tax for the calendar years 1943 and 1944 in the respective amounts of only $2,815.43 and $322.38, and that there is an overpayment in income tax for the calendar year 1945 in the amount of $216.54.

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner on the basis that the taxpayer was taxable upon one-third of the net income of the business conducted under the name of Western Construction Company, less the community portion of such income allocable to taxpayer's wife, as modified by stipulation and agreement of the parties in respect of items not now in controversy.

3. In holding and deciding that the Western Construction Company is a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership and is recognized as such for tax purposes.

4. In failing and refusing to hold and decide that the Western Construction Company, during the taxable years involved, was a partnership consisting only of its three general partners, and that for Federal income tax purposes the income of such partnership was taxable to the general partners and their respective spouses and that the children of the general partners should not be recognized, for Federal income tax purposes, as bona fide partners in the business conducted by the said Western Construction Company.

5. In that its opinion and its decision that, for Federal income tax purposes, the Western Construction Company is a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of forma-

tion of the partnership is not supported by but is contrary to the evidence.

6. In that its opinion and its decision are not supported by but are contrary to the evidence.

7. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE, CAR
Assistant Attorney General.

/s/ CHARLES OLIPHANT, CAR
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Statement of service attached.

Received and Filed T.C.U.S. December 21, 1950.

The Tax Court of the United States

Docket No. 15500

J. A. JOHNSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1947

Aug. 11—Petition received and filed. Taxpayer notified. Fee paid.

1947

Aug. 12—Copy of petition served on General Counsel.

Oct. 1—Answer filed by General Counsel.

Oct. 1—Request for hearing in Seattle filed by General Counsel.

Oct. 10—Notice issued placing proceeding on Seattle, Wash., calendar.
Service of answer and request made.

1948

Mar. 23—Hearing set 5/17/48, Seattle, Wash.

May 24, 25 and 26—Hearing had before Judge Black on merits. Consolidated. Oral motion to keep cases open to receive claim for refund. Granted. Respondent to file amendment to answer by 6/20/48; reply due 7/10/48. Stipulation of facts filed. Briefs due 8/15/48; replies 9/15/48.

June 15—Amendment to respondent's answer filed by General Counsel.

July 12—Transcript of hearing May 24, 1948, filed.

July 12—Transcript of hearing May 25, 1948, filed.

July 12—Transcript of hearing May 26, 1948, filed.

Aug. 9—Motion for extension to 9/1/48 to file brief filed by taxpayer.
8/10/48 Granted.

1948

Aug. 30—Motion for extension to 9/20/48 to file both briefs filed by taxpayer. 8/31/48 granted.

Aug. 30—Entry of appearance of Carbery O'Shea as counsel filed.

Sept. 8—Brief filed by General Counsel.

Sept. 16—Motion for extension to Oct. 5, 1948, to file brief filed by taxpayer. Granted.

Oct. 5—Brief filed by taxpayer. Copy served.

Nov. 1—Reply brief filed by taxpayer. Copy served.

Nov. 5—Reply brief filed by General Counsel.

1950

Mar. 22—Findings of fact and opinion rendered, Black, J. Decision will be entered under rule 50. 3/23/50 Copy served.

June 1—Respondent's computation filed.

June 6—Hearing set July 13/50 on respondent's computation.

July 13—Hearing had before Judge Kern on settlement, uncontested, referred to J. Black.

July 14—Decision entered, Black, J., Div. 15.

Oct. 9—Petition for review by U. S. Court of Appeals, 9th Circuit, filed by General Counsel.

Nov. 2—Proof of service filed by General Counsel. (2)

1950

Nov. 2—Affidavit of service of petition for review filed.

Nov. 3—Motion for extension of time to Jan. 5, 1951 to prepare and transmit the record filed by General Counsel.

Nov. 3—Order enlarging time to Jan. 5, 1951, to prepare and transmit the record entered.

Dec. 21—Statement re diminution of record filed by General Counsel.

Dec. 21—Statement of points with statement of service thereon filed by General Counsel.

[Title of Tax Court and Cause.]

Docket No. 15500

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Bur. Symbols, Seattle IT:90D:DM) dated May 29th, 1947, and as a basis for his proceeding alleges as follows:

1. The petitioner is a citizen and resident of the United States, residing at 1619 East 52nd, Seattle, Washington. The returns for the periods here involved were filed with the Collector of Internal Revenue for the Tacoma District of the State of Washington.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on May 29th, 1947.

3. The taxes in controversy are income taxes for the calendar years 1943, 1944 and 1945 and are in the total amount of $37,903.24.

4. The determination of tax set forth in the said notice of deficiency is based on the following errors:

(a) That the Commissioner erred in distributing the entire taxable income of the Western Construction Company, a limited partnership, to the three general partners of which the petitioner herein is one, instead of distributing the income according to the interests of the limited partners as well as the general partners as per the returns of said limited and general partners.

(b) That the Commissioner erred in disallowing depreciation on personal auto, travel and auto expenses, auto insurance and entertainment, to the petitioner.

(c) That the Commissioner erred in including as income to the general partners for 1945 the petitioner's pro rata share of the profits of a contract known as "Boeing Alterations" not completed by the partnership until 1946. That said partnership is on a "completed contract basis" and the gross profit was included erroneously in 1945 for the partnership, amounting to a total of $7,571.12, which should not have been included in said 1945 income of said partnership.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) That prior to the taxable years above mentioned the petitioner as one of three general partners doing business under the name and style of Western Construction Company, formed a limited partnership under and by virtue of the laws of the State of Washington, taking into said limited partnership, among others, the petitioner's children, to wit: Roy W. Johnson, Evelyn Jorgens and Eleanor Rector. That said Roy W. Johnson, Evelyn Jorgens and Eleanor Rector, while a son and daughters of the petitioner were bona fide partners in said business conducted under the name of Western Construction Company, contributing additional capital and credit and/or personal services to said partnership. That said partnership was regularly and duly created as a limited partnership under the laws of the State of Washington and that said partners, Roy W. Johnson, Evelyn Jorgens and Eleanor Rector assumed their proportionate full liability for losses, if any should occur, to the full amount of their capital investment under the limited partnership laws of the State of Washington, and were entitled to their proportionate share of any profits. That the creation of said limited partnership was for a business purpose and that it was the intention of the general partners and of the limited partners to carry on said construction business as a partnership. That said limited partners at different times drew from said limited partnership different

amounts from their share of the profits and used said amounts for their own personal use.

(b) That the Commissioner erred in disallowing depreciation on personal auto, travel and auto expenses, auto insurance and entertainment. That the petitioner alleges that said automobile was used in the business of Western Construction Company as an ordinary and necessary expense by the taxpayer in the activities of his business and that the agreement among the general partners provided that each general partner pay these expenses personally. Starting the first of 1945 this arrangement was changed so that the partnership paid the expenses of the cars, travel and entertainment but the partners should still provide their own cars; that the partnership owned no automobiles and that the cars of the general partners were the only cars available to carry on the business of the copartnership and that the particular cars upon which depreciation and expense were charged were used exclusively to carry on said copartnership business. That the entertainment of engineers and travel expense was also paid by each partner according to the agreement set forth above and as a regular and necessary expense of the petitioner in carrying on said copartnership business.

(c) That the Commissioner erred in including as income to the general partners for 1945 the petitioner's pro rata share of the profits of a contract known as "Boeing Alterations" not completed

by the partnership until 1946. That said partnership is on a "completed contract" basis and the gross profit was included erroneously in 1945 for the partnership amounting to a total of $7,571.12 which should not have been included in said 1945 income of said partnership.

6. That the Commissioner of Internal Revenue, the respondent herein, did, at aproximately the same time that he gave notice of deficiency, distributing the entire taxable income of the Western Construction Company to the three general partners, gave another notice of deficiency to said limited partnership as a whole alleging it to be an association and assessing said alleged association $594,735.72. That the total sum of said notices of deficiency, covering the Commissioner's distributing the entire taxable income of the limited partnership to the three general partners, and the assessment against the alleged association is more than the entire income of said limited partnership during said taxable years of 1943, 1944 and 1945. That the respondent herein should be required to make an election as to which course respondent wishes to pursue, to wit: to assess the entire taxable income of said limited partnership to the three general partners or to the limited partnership as an association—one or the other—prior to the hearing of this case upon its merits. That the Commission cannot in law or in equity at one and the same time distribute the income of the same entity to both the general partners and to an "association" composed of the general and limited partners.

Wherefore the petitioner prays that this Court

may hear the proceeding and determine that the deficiency shown in the total amount of $37,903.24 as due from the petitioner for the years 1943, 1944 and 1945 should be voided and eliminated and that the petitioner be found not to be indebted to the United States Government for income taxes for said years.

/s/ RALPH B. POTTS,
Attorney for Petitioner.

State of Washington,
County of King—ss.

J. A. Johnson, being first duly sworn, says that he is the petitioner above named; that he has read the foregoing petition, or has had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ J. A. JOHNSON.

Subscribed and sworn to before me this 30th day of July, 1947.

[Seal] /s/ LUCILLE POTTS,
Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT A

Treasury Department
Internal Revenue Service,
Seattle 1, Washington

Seattle Division
305 A 1331 Third Avenue Bldg.,
IT:90D:DM

Mr. J. A. Johnson,
605 Arctic Building,
Seattle 4, Washington.

Dear Mr. Johnson:

You are hereby advised that the determination of your income tax liability for the taxable years ended December 31, 1943, 1944 and 1945 discloses a deficiency of $37,903.24, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle, 1, Washington for the attention of IT:90D:DM.

The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, JR.,
Commissioner,

By /s/ L. E. HALLOWELL,
Acting Internal Revenue
Agent in Charge.

DM:mts
Enclosures:
Statement
Form of Waiver

IT:90D:DM

STATEMENT

Mr. J. A. Johnson
605 Arctic Building
Seattle, Washington

Tax liability for the taxable years ended December 31, 1943, December 31, 1944, and December 31, 1945.

Year		Deficiency
1943	Income tax	$29,111.03
1944	Income tax	2,262.40
1945	Income tax	6,529.81
		$37,903.24

In making this determination of your income tax liability, careful consideration has been given to the reports of examination dated February 5, 1946, and September 16, 1946; to your protests dated April 17, 1946, January 14, 1947, and February 11, 1947; and to the statements made at the conferences held on June 12, 1946, and April 14, 1947.

A copy of this letter and statement has been mailed to your representative, Mr. John H. Von Harten, 1411 Fourth Avenue Building, Seattle 1, Washington, in accordance with the authority contained in the power of attorney executed by you.

In the computation of your net income for each year mentioned, it is held that you and your spouse are each taxable upon one-sixth of the net income of the business conducted under the name of Western Construction Co. It is held that for income tax purposes your children (Roy W. Johnson, Evelyn L. Jorgens and Eleanor J. Rector) were not bona fide partners in the business conducted under the name of Western Construction Co. during the taxable years mentioned.

Taxable Year Ended December 31, 1942

Adjustments to Net Income

Net income as disclosed by original return		$27,457.3
Unallowable deductions and additional income:		
(a) Long-term capital gain	$ 1,845.74	
(b) Business income increased	35,699.63	
(c) Personal expenses disallowed	1,038.95	38,584.3
		$66,041.7
Additional deductions and nontaxable income:		
(d) Contributions increased		64.4
Net income as adjusted		$65,977.0

Explanation of Adjustments

(a) Your income is increased to reflect your one-half share of the ong-term capital gain of $3,691.47 upon the exchange of community)wned capital stock of Western Construction Co. Inc.

(b) Your income is increased to reflect your corrected share of ncome of the Western Construction Co.

Such income is held to be community income and one-half thereof axable to your spouse. Increase in your income is computed as fol- ows:

)ne-sixth of corrected Western Construction Co. net income	$69,974.35
Reported in return	34,274.72
ncrease	$35,699.63

(c) Your income is increased by the disallowance of the following nsubstantiated items which do not constitute necessary business ex- enses to you:

)epreciation on personal auto	$	300.00
'ar operating expense		494.64
'ar insurance		203.27
'ntertainment of engineers, etc.		600.00
'ravel expense		480.00
	$	2,077.91
ess one-half claimed by spouse		1,038.96
alance claimed by taxpayer disallowed	$	1,038.95

(d) Your income is decreased to allow for additional charitable ontributions to be taken into account from the Western Construction 'ompany as follows:

ne-sixth of Western Construction Co. contributions	$	113.16
laimed in return		48.49
dditional allowance	$	64.66

Computation of Tax

Your tax liability is correctly computed under the alternative tax ethod as follows:

1.	Net income		$65,977.04
2.	Minus: Excess of net long-term capital gain over net short-term capital loss		1,945.74
3.	Ordinary net income		$64,131.30
4.	Less: Personal exemption	$ 600.00	
5.	Credit for dependents	87.50	687.50
6.	Balance (surtax net income)		63,443.80
8.	Less: Earned income credit		1,396.01
9.	Balance subject to normal tax		63,047.79

10. Normal tax at 6 per cent	$ 3,722.87	
11. Surtax on item 6	32,216.22	
12. Partial tax		35,939.0
13. Plus: 50% of line 2		922.8
14. Alternative tax		$36,861.9
15. Tax liability upon 1942 income		36,861.9

Taxable Year Ended December 31, 1943

Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return	$29,960.22	$31,321.4
Unallowable deductions and additional income:		
(a) Business income increased	29,790.26	29,790.2
(b) Personal expenses disallowed	1,478.60	1,478.6
Total	$61,228.88	
Additional deductions and nontaxable income:		
(c) Contributions	111.62	
Income as adjusted	$61,117.26	$62,590.3

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share o income of the Western Construction Co. Such income is held to b community income and one-half thereof taxable to your spouse. In crease in your income is computed as follows:

One-sixth of corrected Western Construction Co. net income	$62,443.3
Reported in return	32,653.1
Increase	$29,790.2

(b) Your income is increased by the disallowance of the followin unsubstantiated items which do not constitute necessary business ex penses to you:

Depreciation on personal auto	$ 300.0
Travel and auto expenses	1,232.0
Auto insurance	140.9
Entertainment	1,284.2
	$ 2,957.2
Less: One-half claimed by spouse	1,478.6
Balance disallowed	$ 1,478.6

(c) Your income is decreased to allow for additional charitable ontributions to be taken into account from the Western Construction o. as follows:

ne-sixth of Western Construction Co. contributions		$ 208.34
laimed in return		96.72
dditional allowance		$ 111.62
1. Income tax net income		$61,117.26
2. Less: Personal exemption		600.00
3. Surtax net income		$60,517.26
4. Less: Earned income credit		1,251.81
5. Balance subject to normal tax		$59,265.45
6. Normal tax at 6 per cent	$ 3,555.93	
7. Surtax on item 3	30,196.91	
8. Total income tax (item 6 plus item 7)		33,752.84
9. Balance of income tax		$33,752.84
0. Victory tax net income	$62,590.32	
1. Less: Specific exemption	624.00	
2. Income subject to victory tax	$61,966.32	
3. Victory tax before credit (5% of line 13)	$ 3,098.32	
4. Less: Victory tax credit	500.00	
5. Net victory tax		2,598.32
6. Net income tax and victory tax		$36,351.16
7. Income tax for 1942		$36,861.96
8. Amount of item 17 or 18 whichever is larger		$36,861.96
9. Forgiveness feature:		
(a) Amount of item 17 or 18 whichever is smaller	$36,351.16	
(b) Amount forgiven (¾ of (a))	27,263.39	
(c) Amount unforgiven		9,087.79
1. Total income and victory tax liability		45,949.75
2. Income and victory tax liability disclosed by return, Account #6350168		16,838.72
3. Deficiency in income and victory tax		$29,111.03

Taxable Year Ended December 31, 1944

Adjustments to Net Income

Net income as disclosed by return	$ 9,136.11
Unallowable deduction and additional income:	
(a) Business income increased	4,275.24
(b) Long-term capital gain increased	17.42
(c) Personal expenses disallowed	1,267.25
Total	$14,696.02
Additional deductions and nontaxable income:	
(d) Contributions	59.59
Income as adjusted	$14,636.43

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share of income of the Western Construction Co. Such income is held to be community income and one-half thereof taxable to your spouse. Increase in your income is computed as follows:

One-sixth of corrected Western Construction Co. net income	$16,050.49
Reported in return	11,775.25
Increase	$ 4,275.24

(b) Your income is increased to reflect your corrected share of the Western Construction Co. long-term capital gain as follows:

One-sixth of Western Construction Co. long term capital gain	$ 34.84
Reported in return	17.42
Increase	$ 17.42

(c) Your income is increased by the disallowance of the following unsubstantiated items which do not constitute necessary business expenses to you:

Depreciation on personal auto	$ 300.00
Car operating expense	742.50
Entertainment	597.00
Travel	895.00
	$ 2,534.50
Less: One-half claimed by spouse	1,267.25
Disallowed	$ 1,267.25

(d) Your income is decreased to allow for additional charitable contributions to be taken into account from the Western Construction Co. as follows:

One-sixth of Western Construction Co. contributions	$ 119.17
Claimed in return	59.58
Additional allowance	$ 59.59

Computation of Income Tax—1944

Net income	$14,636.43	
Less: Surtax exemption	1,000.00	
Surtax net income	$13,636.43	
Surtax		$ 4,103.66
Net income	$14,636.43	
Less: Normal-tax exemption	500.00	
	$14,136.43	
Normal tax at 3 per cent		424.09
Income tax liability		$ 4,527.75
Income tax liability disclosed by return, Account #9002366		2,265.35
Deficiency in income tax		$ 2,262.40

Taxable Year Ended December 31, 1945

Adjustments to Net Income

Net income as disclosed by return		$18,078.43
Unallowable deductions and additional income		
(a) Business income increased		11,623.82
(b) Long term capital gain increased		300.22
(c) Personal expenses disallowed		150.00
		$30,152.47
Nontaxable income and additional deductions:		
(d) Interest income decreased		1,079.13
(e) Contributions increased		100.35
Net income as adjusted		$28,972.99

Explanation of Adjustments

(a) Your income is increased to reflect your corrected share of income of the Western Construction Co. Such income is held to be community income and one-half thereof taxable to your spouse. Increase in your income is computed as follows:

One-sixth of corrected Western Construction Co. net income	$30,747.63
Reported in return	19,123.81
Increase	$11,623.82

(b) Your income is increased to reflect your corrected share of the Western Construction Co. long term capital gain as follows:

One-sixth of Western Construction Co. long-term capital gain	$ 600.44
Reported in return	300.22
Increase	$ 300.22

(c) Your income is increased by the disallowance of the following unsubstantiated items which do not constitute necessary business expenses to you:

Car depreciation		$ 300.00
Less: One-half claimed by spouse		150.00
Claimed by taxpayer and disallowed		$ 150.00

(d) Your income is decreased by the elimination of so-called interest reported as having been received from your children as follows:

Roy W. Johnson	$719.42	
Evelyn L. Jorgens	719.42	
Eleanor J. Rector	719.42	$ 2,158.26
Less: Reported on return of spouse (½)		1,079.13
Reduction of income		$ 1,079.13

Since the transactions under which the purported liability of the children arose has been held to be ineffectual for income tax purposes, the interest entries are likewise held to be without substance and do not represent taxable income.

(e) Your income is decreased to allow for additional charitable contributions to be taken into account from the Western Construction Co. as follows:

One-sixth of Western Construction Co. contributions	$ 200.70
Claimed in return	100.35
Increase	$ 100.35

Computation of Tax

Your tax liability is correctly computed under the alternative tax method as follows:

1.	Net income	$28,972.99
2.	Minus: Excess of net long-term capital gain over net short-term capital loss	600.44
3.	Ordinary net income	$28,372.55
4.	Less: Surtax exemptions	500.00
5.	Balance (surtax net income)	27,872.55
6.	Surtax on line 5	11,900.98
7.	Ordinary net income	28,372.55
8.	Less: Normal-tax exemption	500.00
9.	Balance subject to normal tax	27,872.55
10.	Normal tax at 3 per cent	836.18
11.	Partial tax (sum of lines 6 and 10)	12,737.16
12.	Plus: 50% of line 2	300.22
13.	Alternative tax	13,037.38
14.	Income tax liability	13,037.38
15.	Liability disclosed by return, Account #3011849	6,507.57
16.	Deficiency in income tax	$ 6,529.81

Received and Filed T.C.U.S. August 11, 1947.

[Title of Tax Court and Cause.]

Docket No. 15500

ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, alleges and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in paragraph 3 of the petition.

4 (a), (b), and (c). Denies that in determining the deficiencies asserted in the statutory notice the respondent committed any errors, and specifically denies the allegations of error set forth in subparagraphs (a), (b) and (c) of paragraph 4 of the petition.

5(a). Admits that petitioner, as one of three alleged general partners doing business under the name and style of the Western Construction Company, in 1942 and 1943 purported to enter into certain limited partnerships and, among others, pretended to take into said business, as limited partners, petitioner's children, to wit: Roy W. Johnson, Evelyn Jorgens and Eleanor Rector. Denies each

and every other material allegation contained in subparagraph (a) of paragraph 5 of the petition.

5(b) and (c). Denies each and every allegation of error and of fact contained in subparagraphs (b) and (c) of paragraph 5 of the petition.

6. Admits that at approximately the same time as respondent issue the notice of deficiency in this porceeding determining the portion of the income of the Western Construction Company which is includible for Federal tax purposes, in the return of this petitioner for the years involved, the Commissioner also issued a notice of deficiency to the Western Construction Company asserting against it deficiencies in Federal income, declared value excess profits taxes and excess profits taxes on the basis that it is an association taxable as a corporation under the Federal revenue laws for the taxable years 1942 to 1945 inclusive. Alleges that the aggregate of the deficiencies so asserted against the said Western Construction Company, for the years stated, amounts to $728,832.16 instead of $594,735.72 as alleged by petitioner. Denies each and every other material allegation contained in paragraph 6 of the petition.

7. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's ap-

peal be denied, and that the Commissioner's determination of deficiencies be approved.

/s/ CHARLES OLIPHANT, WHP
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:
B. H. NEBLETT,
Division Counsel,

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Received and Filed T.C.U.S. October 1, 1947.

[Title of Tax Court and Cause.]

Docket No. 15500

AMENDMENT TO RESPONDENT'S ANSWER

Now comes the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, in accordance with Rule 17 of the Court's Rules of Practice and pursuant to oral motion on behalf of respondent which was granted by the Honorable Eugene Black, Judge of the Tax Court of the United States, at the hearing of this proceeding at Seattle, Washington, under date of May 26, 1948, by way of amendment to respondent's answer heretofore filed in the above-entitled cause and in order to conform his answer to the proof in the case, respectfully alleges and pleads, in the alternative, as follows:

8. In the event the Court should hold and determine that the limited partnership agreement with respect to Western Construction Company, which was executed February 24, 1942, and purporting to be effective as of January 2, 1942, should be recognized and given effect for Federal tax purposes as to the so-called limited partners, rather than taxing the entire partnership income to the general partners (and their spouses), then:

(a). The three equal general partners, J. A. Johnson, George J. Johnson and Albin Johnson are subject to tax with respect to one-half of the distributive partnership income (1/6 to each general partner) for the period January 2, 1942 to June 30, 1943 (the latter being the effective date of the second limited partnership agreement), instead of 45/105ths thereof (15/105ths as to each general partner) for the period during which the first limited partnership agreement was in effect, as reported in the individual income tax returns of said general partners and their spouses for the taxable years 1942 and 1943.

(b). Respondent hereby makes claim to any increase in the deficiency heretofore determined with respect to this petitioner which may result, as to each of the taxable years 1942 and 1943, by taxing each of the general partners (and his spouse) on 1/6 of the partnership income rather than 15/105ths thereof for the period January 2, 1942 to June 30, 1943.

(c). Effect may be given to respondent's alternative contention herein under a Rule 50 computation to be later submitted, in the event the decision of the Court with respect to the issues presented should require it, inasmuch as a Rule 50 computation will be necessary in any event in order to give effect to certain stipulations and concessions made by the parties at the hearing as to adjustments of income for the years 1942 and 1943.

Wherefore, it is prayed that petitioner's appeal be denied and that respondent's determination be sustained.

/s/ CHARLES OLIPHANT, WHP
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel,

WILFORD H. PAYNE,
Special Attorney,
Bureau of Internal Revenue.

Received and Filed T.C.U.S. June 15, 1948.

Served June 17, 1948.

The Tax Court of the United States
Washington

Docket No. 15500

J. A. JOHNSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court as set forth in its Findings of Fact and Opinion promulgated March 22, 1950, the respondent herein filed a computation on June 1, 1950, which was not contested by petitioner when called for hearing July 13, 1950, now therefore, it is

Ordered and Decided: that there are deficiencies in income tax for the calendar years 1943 and 1944 in the respective amounts of $2,886.91 and $357.89; and that there is an overpayment in income tax for the calendar year 1945 in the amount of $232.81, which amount was paid within two years before the mailing of the notice of deficiency.

[Seal] /s/ EUGENE BLACK,
Judge.

Entered July 14, 1950.

Served July 14, 1950.

In the United States Court of Appeals
For the Ninth Circuit

T. C. Docket No. 15500

COMMISSIONER OF INTERNAL REVENUE,
Petitioner on Review,

vs.

J. A. JOHNSON,
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States on July 14, 1950, that there are deficiencies for the calendar years 1943 and 1944 in the respective amounts of $2,886.91 and $357.89, and that there is an overpayment for the calendar year 1945 in the amount of $232.81, in respect of the Federal income tax liability of J. A. Johnson, the above-named respondent on review. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, J. A. Johnson, is a citizen of the United States, residing at 1619 East 52nd Street, Seattle, Washington, and having a

place of business at 605 Arctic Building, Seattle, Washington. Respond filed his Federal income tax returns for the years 1943, 1944 and 1945, the taxable years here involved, with the Collector of Internal Revenue for the District of Washington, whose office is located in Tacoma, Washington, and within the jurisdiction of the United States Court of Appeals for the Ninth Circuit where this review is sought.

Nature of Controversy

The respondent on review, J. A. Johnson, was, during the taxable years here involved, one of the general partners of the Western Construction Company. The Western Construction Company was created as a limited partnership under the laws of the State of Washington in 1942 and again in 1943. Its certificate of formation included J. A. Johnson, George Johnson and Albin Johnson, three brothers, as its general partners and their several adult sons and daughters as limited partners. The partnership was engaged during the taxable years here involved in the general contracting business. Prior to its organization the business had been conducted by a predecessor corporation known as Western Construction Company, Inc. In his determination of deficiencies in income, declared value excess profits, and excess profits taxes against the partnership, the Commissioner determined that the Western Construction Company, under the so-called limited partnership agreements of February 24,

1942 and June 30, 1943, constituted an association taxable as a corporation as prescribed by Section 3797(a)(3) of the Internal Revenue Code and Section 29.3797-5 of Regulations 111, and that the so-called partnership or association, rather than its individual members, was taxable on the income earned by it during the calendar years 1942 to 1945, inclusive. In the alternative, it was determined by the Commissioner that if the Western Construction Company was recognizable as a valid partnership, for Federal income tax purposes, its income was taxable entirely to its three general partners, one of whom was the respondent on review herein, rather than being taxable on a distributable basis to said general partners and the ten alleged limited partners, children of the three general partners.

The Tax Court of the United States disagreed with the Commissioner's determination and held that the Western Construction Company was a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership and that it should be so recognized for tax purposes. Accordingly, in conformity with its opinion, the Tax Court entered its decision that there are no deficencies in income tax, declared value excess profits tax and excess profits tax for the calendar years 1942, 1943, 1944 and 1945 in respect of the partnership and, as to the respondent on review herein, J. A. Johnson, refused to hold that his three children were not taxable on their shares of the partnership income and

that such shares were taxable to their father, the respondent herein.

/s/ THERON L. CAUDLE, C.A.R.
Assistant Attorney General.

/s/ CHARLES OLIPHANT, C.A.R.
Chief Counsel, Bureau of Internal Revenue, Attorneys for Petitioner on Review.

Received and Filed T.C.U.S. October 9, 1950.

[Title of Court of Appeals and Cause.]

T. C. Docket No. 15500

STATEMENT OF POINTS

Comes Now the Commissioner of Internal Revenue, petitioner on review in the above-entitled cause, by and through his attorneys, Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision that there are deficiencies in income tax for the calendar years 1943 and 1944 in the respective amounts of only $2,886.91 and $357.89, and that there is an overpayment in income tax for the calendar year 1945 in the amount of $232.81.

2. In failing and refusing to sustain the de-

ficiencies in tax determined by the Commissioner on the basis that the taxpayer was taxable upon one-third of the net income of the business conducted under the name of Western Construction Company, less the community portion of such income allocable to taxpayer's wife, as modified by stipulation and agreement of the parties in respect of items not now in controversy.

3. In holding and deciding that the Western Construction Company is a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of formation of the partnership and is recognized as such for tax purposes.

4. In failing and refusing to hold and decide that the Western Construction Company, during the taxable years involved, was a partnership consisting only of its three general partners, and that for Federal income tax purposes the income of such partnership was taxable to the general partners and their respective spouses and that the children of the general partners should not be recognized, for Federal income tax purposes, as bona fide partners in the business conducted by the said Western Construction Company.

5. In that its opinion and its decision that, for Federal income tax purposes, the Western Construction Company is a bona fide partnership composed of the three Johnson brothers and their several children as set out in the certificate of forma-

tion of the partnership is not supported by but is contrary to the evidence.

6. In that its opinion and its decision are not supported by but are contrary to the evidence.

7. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ THERON L. CAUDLE, C.A.R.
Assistant Attorney General.

/s/ CHARLES OLIPHANT, C.A.R.
Chief Counsel, Bureau of
Internal Revenue.

Statement of service attached.

Received and Filed T.C.U.S. December 21, 1950.

[Title of Tax Court and Cause.]

Docket Nos. 15495, 15496, 15497, 15498, 15499, 15500, 15586, and 15588

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the above-entitled related cases may be consolidated for purposes of hearing before the Tax Court, and that insofar as applicable to the issues involved the evidence presented may be regarded as evidence in each of said cases. It is further stipulated that in addition to the facts established by the pleadings, the following facts may be accepted as true, without

the introduction of any further evidence by the parties with respect to the matters so stipulated:

1. The Western Construction Company is or was a so-called limited partnership (or partnerships) for the years 1942 to 1945, inclusive, organized and operating under the laws of the State of Washington, with its principal place of business at Seattle, Washington. The respondent has determined that said so-called limited partnership constitutes an association taxable as a corporation for the taxable years 1942, 1943, 1944 and 1945, under the provisions of the Internal Revenue laws and regulations, which issue is to be presented for determination in Docket No. 15495.

2. The so-called general partners of the said Western Construction Company for the years involved consisted of J. A. Johnson, George J. Johnson and Albin Johnson. The so-called limited partners consisted entirely of the sons and daughters of the three general partners.

3. Petitioners J. A. Johnson and Ellen M. Johnson are husband and wife. Petitioners George J. Johnson and Huldah Johnson are husband and wife. Petitioner Albin Johnson is the husband of Rose Johnson, whose tax liability is not involved before the Tax Court for the years under consideration. Petitioner Lloyd W. Johnson (one of the so-called limited partners) and petitioner Roberta M. Johnson are husband and wife. The taxable income attributable to Ellen M. Johnson, Huldah Johnson and Roberta M. Johnson arises by reason of their

community property interest in the income of their respective spouses under the community property laws of the State of Washington.

4. In the event it should be determined by the Court that Western Construction Company is not an association taxable as a corporation under the Internal Revenue laws and regulations for the years involved, but is a partnership, the income of which is taxable to the three general partners, J. A. Johnson, George J. Johnson, and Albin Johnson, it is then agreed that each of the three general partners is entitled to a further community deduction of $1,200.00, but no more, for each of the years 1942, 1943, and 1944, in excess of that determined and allowed by respondent in the deficiency notices, as business expenses covering depreciation, insurance and operating expenses of automobiles, and also entertainment and travel expenses. The adjustments in such personal expenses of the general partners with respect to their community income for the year 1945, as shown in the deficiency notices, are proper and are hereby accepted by the parties.

5. In the event the Court should hold that the limited partnership agreements involved in these proceedings are to be recognized for Federal tax purposes and that the income of the business conducted in the name of Western Construction Company is taxable to the general and limited partners as contended by petitioners, then it is agreed that the personal community expenses of the three general partners are as stated in paragraph 4 above,

but reserving to respondent the right and privilege of contending and maintaining that the amounts so expended by the three general partners do not constitute deductions which may be allowed in their entirety to said partners in determining their tax liability.

6. For the taxable year 1945 certain salary payments were made by the Western Construction Company in contravention of the Salary Stabilization Act of 1942, as a result of which it is agreed that the amount of $500.00 should be disregarded as costs of its operations for said year. The said sum of $500.00 was not taken into account by the respondent in determining the community net income and the tax liability of the respective general partners as set forth in the statutory notices. It is agreed that upon the determination by the Court of the liability of the Western Construction Company as an association, or the liability of the individual partners, in the event it is determined that the income is taxable on a partnership basis either to the three general partners equally or to them and the limited partners in other proportions, that the sum of $500.00 may be disallowed as a deduction for 1945 and that effect may be given thereto in Rule 50 computations to be submitted after the opinion of the Court is rendered in these proceedings.

7. The gross profit reported in the income tax return of the Western Construction Company for the year 1945 on the "Boeing Alterations Contract,"

in the sum of $7,571.12, does not constitute taxable income for that year but is properly taxable for the year 1946 when the contract was completed. Appropriate adjustments may be made with respect to that item either in the income of the Western Construction Company or of the respective partners for the year 1945, dependent upon the determination of the litigated issues, by the Court, with respect to said proceedings.

8. (Relating only to Albin Johnson, Docket No. 15496.) In the event it is determined that the income of Western Construction Company is taxable on a partnership basis, rather than as an association taxable as a corporation, it is then agreed that the salary of $15,000.00 which was paid to Albin Johnson for each of the years 1942, 1943, 1944 and 1945, constitutes community income and that the remainder of Albin Johnson's partnership income for said years constitutes separate and community income in the following percentages:

Year	Separate Income	Community Income
1942	20.47%	79.53%
1943	35 %	65 %
1944	44.46%	55.54%
1945	48.87%	51.13%

/s/ RALPH B. POTTS,
Counsel for Petitioners.

/s/ CHARLES OLIPHANT, W.H.P.
Chief Counsel, Bureau of Internal Revenue, Counsel for Respondent.

Filed at Hearing May 25, 1948.

Before the Tax Court of the United States

Docket Nos. 15495, 15496, 15497, 15498, 15499, 15500, 15586, and 15588

In the Matter of:
WESTERN CONSTRUCTION CO.,
ALBIN JOHNSON,
ELLEN M. JOHNSON,
HULDAH JOHNSON,
GEORGE J. JOHNSON,
J. A. JOHNSON,
ROBERTA M. JOHNSON,
LLOYD W. JOHNSON,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROCEEDINGS

May 24, 1948, 9:30 A.M.

(Met pursuant to notice.)

Before: Honorable Eugene Black, Judge.

Appearances:

RALPH B. POTTS,
1702 Hoge Bldg., Seattle, Washington,
Appearing for Petitioners.

WILFORD H. PAYNE,
Counsel, Bureau of Internal Revenue,
Smith Tower, Seattle, Washington,
Appearing for Respondent.

* * *

Mr. Potts: Mr. J. A. Johnson, will you take the stand?

Whereupon,

J. A. JOHNSON

a witness on behalf of the Petitioners, was duly sworn and testified as follows: [35*]

Direct Examination

By Mr. Potts:

Q. Will you state your full name, Mr. Johnson? Just sit down, Mr. Johnson.

A. John August Johnson.

Q. Where do you reside, Mr. Johnson?

A. 1619 East 52nd Street.

Q. In Seattle, Washington?

A. In Seattle.

Q. How long have you been a resident of the State of Washington?

A. Since 1905—July, 1905.

Q. Are you a citizen of the United States, Mr. Johnson? A. Yes, sir.

Q. A native or naturalized?

A. I am naturalized.

Q. Where were you born?

A. I was born in Sweden.

Q. Where were you naturalized—in what jurisdiction? A. In Seattle.

Q. In Seattle, here? A. Yes, sir.

Q. When did you come to the United States?

*** Page numbering appearing at top of page of original Reporter's Transcript of Record.**

(Testimony of J. A. Johnson.)

A. I came here on the 16th of July, 1905. I came here from Canada. [36]

Q. What is that?

A. I came here from Canada.

Q. And how long were you in Canada?

A. From 1901.

Q. And what work did you pursue after you came to the New World?

A. Carpenter work.

Q. Will you tell the Court how long you pursued that work, and what became of it?

A. I worked at carpenter work in Winnipeg, Canada, and I started out here in Seattle—doing carpenter work as well as being a foreman. I worked at carpenter work, and was a foreman in Winnipeg, and I started the same thing here in Seattle after I had been here a few months. And in 1909 George Johnson and myself went into business together—into a partnership.

Q. You have referred to a George Johnson?

A. Yes.

Q. Who is he? A. My brother.

Q. Give us the year again.

A. 1909. In the summer of 1909.

Q. And you formed a partnership with him, as I understand it? A. Yes, sir. [37]

Q. What work did you and your brother do?

A. Oh, at that time, on account of the lack of capital we were doing mostly residential work—working on residences.

(Testimony of J. A. Johnson.)

Q. When you say "residences,"—you mean building homes, is that it?

A. Yes. And after a few years we went into larger buildings and different kinds of construction.

Q. What was the name that you and your brother operated under in the partnership?

A. We went under the name of Johnson Brothers at that time.

Q. Now, coming down to the year 1934 did you do anything about extending your partnership?

A. I think it was in 1917 that we changed the name to Western Construction Company. But then in 1934, due to the depression, and due to lack of capital at that time, we took Albin Johnson in with us—our other brother.

Q. Who is Albin Johnson?

A. That is the other brother who is now with us in the Western Construction Company.

Q. Now, what kind of work did you do after 1934—immediately after?

A. We had that job at Coulee.

Q. Tell the Court what that job was. [38]

A. We took a contract to build two bridge piers there and a water pier, and due to the raise in wages particularly—100 per cent—was due to inspectors insisting on raising the wages, we lost considerable of our money on those jobs.

Q. After you got through with this job at Coulee Dam what was the financial condition of the partnership? A. We were pretty badly bent.

(Testimony of J. A. Johnson.)

Q. What happened after that?

A. We organized then into a corporation on the advice of our banks and our bondsmen that by doing that we could go ahead and take other work and be able to earn enough so that we would be able to pay off the indebtedness without somebody coming and grabbing our finances and making it impossible for us to do business.

Q. As general partners before this corporation was formed what was your personal financial condition, say with respect to your homes, and so forth?

A. Well, at that time we had our homes and everything that we had pledged to the bank.

Q. All right. Now, who formed this corporation?

A. It was with three brothers, including our sons and our——

Q. (Interposing): Who were the incorporators?

A. Well, it was myself, and George Johnson, and Albin Johnson, and Roy, my son, and George Johnson's son, Lloyd [39] Johnson, and our bookkeeper.

Q. Aren't you mistaken? Wasn't it just Roy Johnson, Lloyd Johnson and Lucille Easterbrook?

A. I realize now that they were the incorporators, and myself and my brothers were interested in it, but not in the incorporation exactly.

Q. Who had the stock issued to them, and who subscribed for the stock in that corporation?

A. It is beginning to get kind of vague to me now.

(Testimony of J. A. Johnson.)

Q. Well, I will take that up later. You may have the opportunity to refresh your mind from the records. Now, what happened to the corporation?

A. As soon as we were able to make enough to pay off the indebtedness we were disincorporated again.

Q. Well, I will have to take that matter up later. You do not know what happened to the stock in the corporation?

A. The stock in the corporation was given back to the partnership, I believe.

Q. You mean to yourself, George Johnson and Albin Johnson? A. Yes, sir.

Q. Was there anything given to the incorporators for their interest in that stock?

A. Yes, they were given a partnership in the company—in the partnership. [40]

Q. When you say "they," whom do you mean?

A. Roy Johnson and Lloyd Johnson.

Q. Was anything given to the incorporators for their interest in that stock?

A. Yes; they were given partnerships in the company, in the partnership.

Q. Who?

A. Roy Johnson and Lloyd Johnson.

Q. You say "were given partnerships"; in what partnership?

A. In the Western Construction Company.

Q. Do you recall the date of that partnership; the formation of it? A. Not exactly.

(Testimony of J. A. Johnson.)

Q. Well, after this partnership, this interest, was given to Lloyd and Roy, what business did you do?

A. Well, we kept on with the same building business. I could mention some of the contracts we took.

Q. That was what time; about what year was the corporation dissolved?

A. 1941, I believe.

Q. 1941? A. Yes.

Q. And what was your partnership's condition as to capital? [41]

A. At that time we were very weak, financially.

Q. Did you make any effort to get new capital at that time?

A. Yes; we tried courses, particularly——

Q. Just turn to the court and tell the court what efforts, if any, you made to get new capital at that time.

A. Mr. Phillip Johnson, head of Boeing's at that time, I went to see him to see if we could interest him to help to finance it, but he wasn't interested. We went and seen Mr. Frank Grandstone of University Building Company. We had had a little financial set-back before and it wasn't easy to interest anybody.

Q. Were you successful in—— A. No.

Q. ——in getting anybody to put money into the partnership at that time in 1941?

A. No. We tried to get other construction companies interested in going with us, and take work

(Testimony of J. A. Johnson.)

with us, and we figured some job even before that together with some construction company like a fellow by the name of La Gossa, or something, up at Yakima; but when we took a job of that kind you can't control the amount of the bids that go in for it and, consequently, we couldn't get the work and finally we got together with our brother, Mr. E. R. Erickson, our brother-in-law, and interested him to go in with us. We [42] thought that he had some money.

Q. Now, what business name did you assume?

A. West Coast Construction Company.

Q. And did you make an arrangement with him to go in together and take some work?

A. Yes.

Q. What work was that?

A. That was the West Park housing job out at Bremerton.

Q. Did he have any capital?

A. We were made to believe that he had about sixty thousand dollars which he was supposed to put up so much cash and we were supposed to put up so much cash after we had the job, but after we got the job and put up the bond and so on, when it came to put up the cash in the bank, he didn't have any. He had quite a few jobs and we didn't know the status of those jobs at that time, but later on it proved that those jobs were bad jobs that he had and he was worse than broke.

Q. After you got through the West Park project there—first of all, can you tell us the time of the

(Testimony of J. A. Johnson.)

year and the year that you got through with that West Park housing project?

A. They started that about the 12th of December, 1940, and they finished that in, substantially finished, in October but the planting and garden work. That could not be done during the summer. We had to leave some of that work until in the fall and that was finished some in the fall of [43] 1941, and I believe it was probably January or February before it was all completed.

Q. Now your attention is called to a limited partnership consisting of the three general partners, yourself, George Johnson, and Alvin Johnson, and Lloyd Johnson and Roy Johnson, Weston Johnson, Ellen I. Rector, Bernice J. Wallin, and Elsie Keil.

Mr. Potts: May this be marked?

The Court: It will be marked as Petitioner's Exhibit Number 1.

(The document referred to was marked Petitioner's Exhibit 1 for identification.)

Q. (By Mr. Potts): Was there such a partnership formed?

A. I didn't get it.

Q. Was there a partnership formed of yourself, George Johnson and Alvin Johnson, and the limited partners I have just read? A. Yes.

Q. And can you give us the approximate date?

A. I think it was February the 24th, 1942.

Q. Showing you——

(Testimony of J. A. Johnson.)

Mr. Payne: If your Honor please, could I make one request at this time? We have explained rather fully to the court the nature of the issues. My only request is [44] with reference to terminology. I don't wish to be jumping up and objecting, and can we have it understood now that whatever terms we use, limited partnership, general partners, it is subject to the——

The Court: That is always understood, Mr. Payne. We never——

Mr. Payne: Just so that we needn't be petty about our objections.

The Court: Either party can characterize what was done in their own terms, of course.

Q. (By Mr. Potts): Showing you Petitioner's Exhibit 1, marked for identification, this is a photostatic copy, so I will ask you if you can examine it and see if this is a true photostatic copy of the articles of that so-called partnership I just interrogated you about?

A. Yes; this is a copy of that copartnership; yes, February 24, 1942.

Mr. Potts: We offer, if the court please, the certified photostatic copy, from the records of the County Auditor's Office of King County, the certificate of formation of a limited partnership. The name: Western Construction Company.

Mr. Payne: No objection.

The Court: It will be received as [45] Petitioner's Exhibit Number 1.

(Testimony of J. A. Johnson.)

(The document heretofore marked Petitioner's Exhibit 1 was admitted in evidence as Petitioner's Exhibit 1.)

Q. (By Mr. Potts): Now, Mr. Johnson, can you tell the court your reasons for forming this limited partnership and will you tell him who the limited partners are?

A. The limited partners are as already mentioned, our children, the boys and the girls.

Q. Now, take your own children; who were your children that formed this limited partnership?

A. My son, Roy Johnson, and Ellen.

Q. Will you give us his age at the formation of this partnership? At the time of the formation of this partnership——

A. About thirty-five (35), I guess.

Q. What had been Roy's education?

A. He has worked and studied engineering; he took that up in school and University until graduated as a civil engineer.

Q. At what University?

A. University of Washington.

Q. Here in Seattle? A. Yes. [46]

Q. Now, would you go on to the next child; who is the next child?

A. Ellen Rector; Mrs. Rector now.

Q. Yes?

A. She took up medicine at the University and then at St. Louis, Missouri, and she interned—I can't think of the hospital there—on the East Coast.

(Testimony of J. A. Johnson.)

Q. Johns Hopkins?

A. Yes. And then she got a scholarship to go back to England, so that she was there when the war broke out and she was there practically a year on account of she couldn't get back. After she came back from there both she and her husband went into practice.

Q. What was that time that they entered practice, approximately?

A. It was just after the war started.

Q. In 1942?

A. About 1940, I think it was; maybe 1939.

Q. Did she specialize in anything?

A. She was a pediatrician.

Q. Is that a——

A. A child specialist.

Q. A specialist in the care of children and infants? A. Yes.

Q. And about what was her age at the time of the [47] formation of this partnership?

A. She is two years older than Roy, so she must have been about thirty-seven (37); she is now about forty.

Q. All right; *we* will be about forty-two (42) now? A. Yes; 42 now.

Q. Now the third who was a limited partner?

A. That was Evelyn.

Q. What was her last name?

A. Mrs. Jorgens.

Q. Was she married? A. Yes.

(Testimony of J. A. Johnson.)

Q. And where did she live?

A. She lived in Spokane.

Q. That is in the State of Washington?

A. Yes.

Q. What was her husband's occupation?

A. He was working as a—in a big printing establishment there in Spokane, looking after the printing presses; I have forgotten what they call them.

Q. Is he a pressman?

A. A pressman; yes.

Q. And what was Evelyn's and her husband's approximate ages at the time of the formation of this partnership?

A. About thirty; he was a little older, about thirty-five [48]

Q. What property, if any, did they own at that time?

A. They had their own home at that time and a few other things; nothing real big, but they had considerable assets at that time.

Q. Did they own some real estate besides their home?

A. Yes; I think they had a summer home.

Q. Up on the lake?

A. Up on the lake somewhere; yes.

Q. Near Spokane? A. Yes.

Q. Do you know about what his earnings were at the time of the formation of this partnership; Mr. Jorgen's?

A. No, I am not plain on that.

(Testimony of J. A. Johnson.)

Q. He was a pressman though, you say?

A. Yes.

Q. Now, did you have any other children at that time? A. Yes; I had a younger girl.

Q. What was her age?

A. Her age was about 18.

Q. She was not taken in as a limited partner?

A. No; she was working for us also at the time as a stenographer in the office.

Q. What was the reason she wasn't taken in as a limited partner when her sister and brother was?

A. She wasn't of age. [49]

Q. Now, will you tell the court about Roy? What work, if any, had he done prior to the formation of the limited partnership for the partnership of the Western Construction Company?

A. In fact, both Roy and Lloyd worked for the company every year during the vacations from school. Roy and Lloyd worked for us, both of them, when they built the Schaffer Building across the street from Frederick and Nelsons. At that time Roy was thirteeen and Lloyd about twelve and they worked during vacation and during the school Roy was helping us sometimes on false work and drawings and engineering of that kind that we needed.

Q. You have mentioned false work drawing; will you explain that?

A. When building a drawing, you have to have false work to build it on; you have to have a certain amount of truss work before you can pour the concrete and that was something not assigned by

(Testimony of J. A. Johnson.)

the state or city or whoever took bids on *this bridges.* It was up to the contractor to submit drawings for that purpose and Roy always took care of that for us and as soon as he got through the University, then we got into this hard times and he went and worked for different other companies like the Boeings and then for the City of Portland.

Q. What work did he do down there in [50] Portland?

A. He had charge of the putting in of the new street car system or bus system.

Q. The electric trolley coaches?

A. Yes; and he worked at Bonneville Dam for the Army Engineers; and he was up at Lake Chelan working for the mining company up there for a while.

Q. That is the How Sound Company?

A. Yes.

Q. When this company was formed——

A. Excuse me; and then he come back to Seattle and had charge of putting in the trolley lines here in Seattle also; the bus trolley lines; he had charge of that.

Q. Now, referring to the date of the limited partnership, we have just introduced as Exhibit Number 1, the articles, what did Roy do, or was he doing, at that time, February 24, 1942?

A. I am not absolutely sure whether he had started again with us then or whether he started shortly afterwards. I think he started shortly afterwards.

(Testimony of J. A. Johnson.)

Q. All right. Now, will you tell the court the purpose of forming this limited partnership? Why did you form it? What was your intention in forming this limited partnership?

A. In order to make use of our children, particularly the boys, in construction because they were all trained in [51] that particular business and it was to straighten our finances.

Q. What about your daughter's husband?

A. Well, like Stanley Jorgens; I was trying to interest him.

Q. You say Stanley Jorgens; identify him for the court. A. He is Evelyn's husband.

Q. He is the pressman living in Spokane?

A. Yes; I was trying to interest him to come to Seattle and come in with us, but due to the uncertainty of this here he wasn't too sure about doing that, but he was willing to come in with us and help us financially.

Q. All right. Now, what about Mr. Gustafson, the husband of George Johnson's daughter Rachel?

A. Well, Gustafson worked for us for quite a long time, up until the worst part of the depression, and when he went back he went into another business.

Q. What was his education?

A. Well, he started in as a premedical student, but he, my brother George, advised him to take engineering instead so that he changed from premedics to engineering and he was working for us when he intended to go in this other business be-

(Testimony of J. A. Johnson.)

cause he worked for this fellow with the butcher shop during his vacation in school and he knew that business, and I suggested at that time that you would do better in [52] contracting work than the meat business, but not the way things look now. So he went back in that business because this friend of his wanted to sell out for some reason or another, but we tried again to get him to come with us because he was a valuable man. He had graduated from engineering and he was the kind of a fellow we could get along with and we would like to see him with us in the business, and we thought by getting them to come in and invest with us that we would finally get him to come in.

Q. All right. Now, what about—well, I don't think I will take that up yet. What about Roy Johnson, George's oldest son?

A. He was working with us right along, but the same thing happened there. During the depression, why, he got interested with another company, a fellow by the name of Kuney, and he had worked for him on the job up in Montana, if I remember, and this Kuney offered Lloyd a good proposition if he would go in with him, so Lloyd went with Kuney on a job or so, but as far as I understand, even though he was working with Kuney, he would come down evenings, and sometime during the day, and go over bids with us and look over estimates and one thing or another, and then he even helped us with estimates and consulted, being that he was also a graduate engineer.

(Testimony of J. A. Johnson.)

Q. Did or did not Roy Johnson's going with Kuney have [53] any part in your intentions to form this limited partnership?

A. Well, we formed the limited partnership with the intention that we would be able to keep these boys with us and continue the business. We realized, both George and myself, that we were getting pretty well up in age and we were in hopes that our families could stick together and keep on the business.

Q. What was your age at the time of the formation of the limited partnership?

A. Well, I will be seventy (70) my next birthday in January.

The Court: It would be about sixty-four (64), I guess.

The Witness: Sixty-four (64); yes.

Q. (By Mr. Potts): And do you know George's age at that time?

A. He was two years younger than I.

Q. Sixty-two (62) then? A. Yes.

Q. What was Alvin's age?

A. About ten years younger than I am.

Q. He was about fifty-two (52) at that time?

A. I think he is twelve (12) years younger than I am.

The Court: That would be about fifty-two. We will take a recess for ten minutes now. [54]

(Whereupon, at 11:15 o'clock a.m., a recess was had until 11:25 o'clock a.m.)

(Testimony of J. A. Johnson.)

The Court: All right.

Mr. Potts: Mr. Reporter, would you read the last question?

(Whereupon, the following was read by the reporter:)

"Q. He was about fifty-two (52) at that time?

"A. I think he is twelve years younger than I am.

"The Court: That would be about fifty-two (52)."

Q. (By Mr. Potts): Now, did Alvin have a son?

A. Yes.

Q. What was that son's name?

A. Winston Johnson.

Q. And about what was his age at that time, just approximately?

A. About twenty-four (24).

Q. What was that?

A. About twenty-four (24) or twenty-five (25).

Q. What had been his education?

A. He had also had three years in the University in engineering.

Q. Had his education been interrupted by the War, do you know? A. Yes. [55]

Q. What branch of the service was he in?

A. I believe some kind of construction work he was in.

Q. Was he in the army engineer corps?

(Testimony of J. A. Johnson.)

A. Yes; army engineers; yes.

Q. Now, with respect to the limited partnership, how were the investments of your children made?

A. They borrowed, together the three of them, twenty (20) thousand dollars.

Q. From whom?

A. I borrowed them the money and they gave a note for it.

Q. They gave a note for it? A. Yes.

Mr. Potts: We would like the privilege of substituting for these notes photostatic copies later on.

The Court: You may have that privilege.

Mr. Potts: May we have this marked; we can mark the three together.

The Court: Yes. Petitioner's Exhibits 2, the three of them together.

(The document referred to was marked Petitioner's Exhibit 2 for identification.)

Q. (By Mr. Potts): Showing you Petitioner's Exhibit 2, marked for identification, consisting of three sheets of paper, will you [56] tell us what that exhibit is?

A. That is a note from Ellen Recton and a note from Roy Johnson and a note from Jorgenson, $6,666.66.

Q. $6,666.66; is that correct? A. Yes.

Q. Each of the notes are in that amount?

A. Yes.

Q. And will you tell us the dates of these notes?

A. April 21, 1942.

(Testimony of J. A. Johnson.)

Q. And the terms; is that expressed there?

A. It is four per cent interest and——

Q. When is it payable?

A. One year, April 1, 1943.

Q. Each of the notes are the same in that respect, are they? A. Yes.

Q. On Evelyn Jorgen's note it seems to be payable April 21, 1942, but that——

A. ——it is a mistake. It is given one year here somewhere.

Q. It says one year in the body of the instrument? A. Yes; one year.

Mr. Potts: We offer them, if the Court please, the photostatic copies. I will show these to Mr. Payne.

Mr. Payne: No objection, your Honor. [57]

The Court: The three will be attached together and received as Petitioner's Exhibit Number 2.

(The documents heretofore marked Petitioner's Exhibit 2 was admitted in evidence as Petitioner's Exhibit 2.)

Q. (By Mr. Potts): Now, when these notes were given, Mr. Johnson, did you have any arrangement or understanding with the children as to the payment of these notes?

A. We had this arrangement that the notes was to be paid.

Q. What was that?

A. Yes, it was the understanding that they would pay the notes.

(Testimony of J. A. Johnson.)

Q. Was there any understanding that if the business should be a failure that they wouldn't have to pay the notes?

A. The notes were payable either one way or another, but if it was a failure, then they would have to come in and pay it.

Q. Did they understand that?

A. Of course they understood that.

Q. Did you make it plain to them at the time?

A. They were all old enough to know that if they were giving a note it wouldn't be given to just give it; it was given to back up with it. [58]

Q. Now, in that respect, in regard to these notes, will you tell the court the purpose of these notes, in obtaining these notes?

A. In order to strengthen our financial situation.

Q. At that time, in April of 1942, did you need additional finances?

A. In the contracting business it is just like this; you can take a contract for twenty-five thousand dollars, for instance. You wouldn't need so much financial help. But, if you take a contract of that size, you have to be there and supervise it and do practically all of it yourself and go and work with pick and shovel and do it yourself or you couldn't possibly come out because the competition is so great. When it comes to one hundred thousand dollars, it is a little bit better. Competition isn't quite so bad. When it comes to a couple of million dollars, it is better because you haven't got the competition. But when it is a small contract which

(Testimony of J. A. Johnson.)

the average person can handle, the competition is much greater. That is the reason we wanted to have more financial backing so that we could take larger contracts and be able to furnish the bond and get the backing from the bank so that we could carry it through. The most difficult thing in our construction work has been to get the bonding company to furnish us the bond.

Q. Now, with these notes, did you or did you not use [59] them for the purpose of securing credit?

A. Correct; that is what we had them for.

Q. Did you use them for the purpose of securing credit? A. Yes; we did.

Q. Can you tell the court any instances in which you put the notes on any financial statement?

A. We put them on our financial statement to the bank and also to the bonding company.

Q. Did you do that as an individual or as a general partner or both?

A. I think, I am not absolutely sure whether they were put in there in a general partnership because this was our individual assets, but our individual assets was put on the statement and when I made an individual report to the bank, then I had those down there.

Q. Can you tell us of any banks that you remember now with whom you might have filed a statement listing these notes?

A. With the Seaboard Branch of the First National Bank of Seattle.

(Testimony of J. A. Johnson.)

Q. With the Seaboard Branch of the Seattle First National Bank? A. Yes.

Q. Now, have you told us how long Roy worked for the limited partnership after the limited partnership was formed? [60]

A. He worked until in the summer of 1944.

Q. And what work did he do?

A. He worked as an engineer laying out surveying and laying out work on the ground and also in the estimating and also as supervisor. At Renton, or the Renton Housing Project he did both the engineering and also helped me in the office with estimating. At Boeings when we were down there——

Q. What work did you do for Boeings?

A. We built the Boeing Cafeteria and the food service building and he did the engineering on both jobs and had supervision on the food service building.

Q. There was some special construction work on that Boeing Cafeteria, was there not, dealing with engineering problems?

Mr. Payne: If your Honor please, I will have to object to some of these questions being leading.

Mr. Potts: They are; that I realize.

The Court: Well, be careful and not lead your witness.

Mr. Potts: Yes.

Q. (By Mr. Potts): What was the construction of the Boeing Cafeteria, Mr. Johnson?

(Testimony of J. A. Johnson.)

A. Well, it is almost on any job and it is definitely on any large job that you need engineering. You need a man [61] to have practical experience and also technical experience and knowledge and that was quite a severe job to lay out on account it was not a square building but had all kinds of corners on it.

Q. What about the roof of that building?

A. It was a difficult roof. It was over 100 feet span in the arches there.

Q. One hundred foot span in the arches?

A. Yes.

Q. Who did the engineering on that?

A. Roy did the engineering on it.

Q. Are you an engineer? A. No.

Q. Are any of the general partners engineers?

A. No; we didn't have the privilege that the young fellows have now.

Q. All right; what other work did Roy do for the partnership?

A. Well, he worked on the transit shed with my brother.

Q. For whom was that building constructed?

A. For the army down there on Fourth Avenue.

Q. In Seattle?

A. Seattle. That is the big building. I don't remember the amount of the contract, but it covers an awful lot of area and he did engineering work down there together with [62] my brother and then they built two docks for the City of Seattle; and he was also doing the engineering work there.

(Testimony of J. A. Johnson.)

Q. Did he act in an executive capacity in any of this work?

A. With respect to estimating because together with the work there always came a lot of estimating.

Q. Now, do you know the circumstances that compelled Roy to leave the partnership in 1944?

A. Why this engineer up at Juneau that had been sort of getting that electrical power unit, started getting it organized, had met Roy and was personally acquainted with him and he come out here to see Roy and ask him if he wouldn't undertake to do the engineering on it, and that was tempting for him to undertake.

Q. I didn't get that; that was what?

A. That was tempting for him to take.

Q. Tempting?

A. Yes. So against my will he went up there. I wanted him to stay with us at that time but he said there wasn't anything so pressing right then. We were sort of slack on work and he went up there to do the engineering. As we got up to Spokane on this job, the Velox Naval Supply Depot, I was trying on that job to get Roy to come back because this man, Johnstone, in charge of that job insisted on that we name all the men that we wanted to help us. He questioned us, [63] and particularly our ability to handle it and handle it in as short a time as necessary to get it built and at that time I named Roy as one of the engineers and also Lloyd and was in hope that if we got in a pinch we could get them both over there to help us, but as

(Testimony of J. A. Johnson.)

we got started we got ahold of a number of the foremen that we had here in Seattle and got them to go there with us and Johnstone eased up a little bit when he saw things begin to go; so that I never did put pressure on Roy to come back there and help us.

Q. Now, you spoke of listing Roy and Lloyd; what do you mean by that, on these jobs? Will you explain that to the court?

A. This Commander Johnstone asked us to list all our personnel that we could have.

Q. What kind of personnel? You mean carpenters?

A. No; the technical staff that we could have.

Q. And you had listed, as I understand your testimony, Roy and Lloyd?

A. Yes; and Winston also.

Q. Now, what happened to Roy's connection with the company; how long was he away?

A. Oh, he was away, he expected to be away only that summer, but due to when they got started on the work there they couldn't get any men, they couldn't finish and it took the following year to finish the job. [64]

Q. Aren't we getting a little ahead; you said to finish the job. What did he go up there originally for?

A. Just to make the drawings, the engineering part of it.

Q. But did he do other than the engineering?

A. When they got the bids they only got a

(Testimony of J. A. Johnson.)

couple of bids locally and they was away out of line so that the counsel at Ketchikan asked him to go ahead and do it. First on cost plus but due to the fact that it had federal money in it, it wasn't permissible so then they asked him to take it on a contract. Then he went ahead and took a contract on it and expected to get it finished that summer.

Q. In that connection with that contract, did he or did he not approach the partnership regarding that matter?

A. Yes; he wanted us to go up there and take the job but by that time we had this Spokane job and I wasn't interested in going up to Ketchikan to handle that job.

Q. All right; now after the bid, did you testify he did take the job?

A. He took the job; yes.

Q. And was it completed before the year 1945?

A. Yes. No. 1946.

Q. Now, with respect to Winston Johnson, and after the formation of the limited partnership, what was his connection with the partnership? [65]

A. He was in the office most of the time.

Q. What kind of work did he do?

A. Doing estimating.

Q. Now, will you tell the court just what estimating work consisted of?

A. To take off the quantities from the plan and see how many yards of concrete and how many feet of form and how much lumber and how much excavation and so on.

(Testimony of J. A. Johnson.)

Q. And is that a major part of the contracting work; the important part?

A. That is the most important part of contracting work, to get the quantities and get them correct so that when you price the job you don't find that you have a lot more material to handle than what the estimate was. That is really important and the next important is to get together and price it and that is why we got Lloyd to come in and talk it over and how much it would cost to do the work because you couldn't go by previous experience; you had to get new experience almost every month due to the changing of prices; everything was going up so fast.

Mr. Potts: We are going to have then, if the court please, the second limited partnership marked for identification.

The Court: It will be marked as Petitioner's Exhibit Number 3. [66]

(The document referred to was marked Petitioner's Exhibit 3 for identification.)

Mr. Payne: No objection.

Mr. Potts: We offer, then, the second limited partnership in evidence.

The Court: It will be received in evidence as Petitioners' Exhibit Number 3.

(The document heretofore marked Petitioner's Exhibit 3 was admitted in evidence as Petitioner's Exhibit 3.)

(Testimony of J. A. Johnson.)

PETITIONER'S EXHIBIT No. 3

Certificate of Formation
of a
Limited Partnership

State of Washington,
County of King—ss.

We, J. A. Johnson, George Johnson, Albin Johnson, Roy W. Johnson, Lloyd W. Johnson, Winston A. Johnson, Eleanor J. Rector, Evelyn L. Jorgens, Bernice K. Wallin, Elsie Kiel, Vedola H. Johnson, Lorraine J. Ellingson, and Rachel Gustafson, the subscribers, having formed a limited co-partnership pursuant to the laws of the State of Washington, do hereby certify and state:

I.

That the name of the co-partnership is Western Construction Company.

II.

That the character of the business is general contracting.

III.

That the location of the principal place of business and office is in the Arctic Building, City of Seattle, County of King, and State of Washington.

IV.

That the name and residence of each member, general and limited partners being respectively designated, is as follows:

(Testimony of J. A. Johnson.)

Petitioner's Exhibit No. 3—(Continued)

General Partners:

J. A. Johnson, 1619 East 52nd Street, City of Seattle, County of King, State of Washington.
George Johnson, 4558 55th N.E., City of Seattle, County of King, State of Washington.
Albin Johnson, 2003 Boylston North, City of Seattle, County of King, State of Washington.

Limited Partners:

Roy W. Johnson, 1520 Olin Place, City of Seattle, County of King, State of Washington.
Lloyd W. Johnson, 3679 Grayson Street, City of Seattle, County of King, State of Washington.

Winston A. Johnson, 901 East 71st Street, City of Seattle, County of King, State of Washington.

Eleanor J. Rector, 221 North Portage Path, City of Akron, County of Summit, State of Ohio.

Evelyn L. Jorgens, N. 603 Walnut Road, City of Opportunity, County of Spokane, State of Washington.

Bernice K. Wallin, 7214 Lake Ridge Drive, City of Seattle, County of King, State of Washington.

Elsie Kiel, 1912 North 46th, City of Seattle, County of King, State of Washington.

Vedola H. Johnson, 901 East 71st Street, City

(Testimony of J. A. Johnson.)

Petitioner's Exhibit No. 3—(Continued)

of Seattle, County of King, State of Washington.

Lorraine J. Ellingson, 1120 15th Avenue, City of Seattle, County of King, State of Washington.

Rachel Gustafson, 3219 Magnolia Boulevard, City of Seattle, County of King, State of Washington.

V.

That the term for which the partnership shall exist is for ten (10) years from the date hereof.

VI.

That the amount of cash contributed by each Limited Partner is as follows: Lloyd W. Johnson, Bernice K. Wallin, Lorraine J. Ellingson, and Rachel Gustafson, $5,000.00 each; all of the of the rest of the other Limited Partners the sum of $6,666.66 each.

VII.

That the time when the contribution of each Limited Partner is to be returned is agreed to be the end of said partnership as above stated, to wit: ten (10) years from the date hereof.

VIII.

The share of proceeds by way of income which each Limited Partner shall receive by reason of his contribution, is as follows:

(Testimony of J. A. Johnson.)

Petitioner's Exhibit No. 3—(Continued)

The General Partners, and each of them, are to receive a salary per year, to be fixed by them in a reasonable amount to cover their superintendence and management of the work and business, in proportion to the amount of work done by them, each year, taking into account the amount of the net profit of the partnership each year, never to exceed the sum of $15,000.00 a year salary to any one of the General Partners.

After the payment of said salaries to said General Partners and deduction of all other expenses of the partnership, the net income or proceeds shall be divided among the partners both general and limited on the basis of their financial interest in said partnership, as shown by the books of the partnership.

IX.

The General Partners are hereby given the right to admit additional Limited Partners in the future upon the agreement of the General Partners hereto, but in no event other than upon a cash contribution to the partnership, and upon the same terms as herein expressed.

X.

The entire management of the partnership shall be vested in the three General Partners and the right is hereby given to the remaining General Partners to continue the business upon the death or retirement of a General Partner, and the right

(Testimony of J. A. Johnson.)

Petitioner's Exhibit No. 3—(Continued)

is also given to the General Partners to continue the business upon the death or retirement of any of the Limited Partners hereto.

XI.

It is understood and agreed between all of the partners that a Limited Partner shall not receive out of partnership property any part of his contribution until all liabilities to the General Partners and Limited Partners on account of their contribution have been paid or their remains property of the partnership sufficient to pay them.

XII.

The interests of all the Limited Partners herein may be transferred upon the approval of the General Partners to accept a new assignee as a Limited Partner in this co-partnership, and not otherwise.

XIII.

No General Partners shall demand or receive any property other than cash in return for his contribution and each General Partner's interest in this partnership shall be fixed as of June 30, 1943, as per agreement of the General Partners and by the books of the co-partnership.

In Witness Whereof the partners have hereunto set their hands this 30th day of June, 1943.

/s/ ELEANOR J. RECTOR,
/s/ EVELYN L. JORGENS,

(Testimony of J. A. Johnson.)

Petitioner's Exhibit No. 3—(Continued)

/s/ BERNICE K. WALLIN,
/s/ ELSIE KEIL,
/s/ VEDOLA JOHNSON,
/s/ LORRAINE J. ELLINGSON,
/s/ RACHEL GUSTAFSON,
/s/ J. A. JOHNSON,
/s/ GEO. JOHNSON,
/s/ ALBIN JOHNSON,
/s/ ROY W. JOHNSON,
/s/ LLOYD W. JOHNSON,
/s/ WINSTON A. JOHNSON.

State of Washington,
County of King—ss.

On this 30th day of June, 1943, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared J. A. Johnson, George Johnson, and Albin Johnson, the General Partners above named, and Roy W. Johnson, Lloyd W. Johnson, Winston A. Johnson, Eleanor J. Rector, Evelyn J. Jorgens, Bernice K. Wallin, Elsie Kiel, Vedola Johnson, Lorraine J. Ellingson, and Rachel Gustafson, Limited Partners, all of whom executed the foregoing instrument, and each one of said partners both general and limited, being sworn by me separately deposes and said that he or she as the case might be, had executed the foregoing instrument as his or her free and voluntary act and believed that the statements contained in said certificate of

(Testimony of J. A. Johnson.)

Petitioner's Exhibit No. 3—(Continued)

limited partnership are true, and that each one of them executed said certificate for the uses and purposes therein mentioned.

Witness my hand and official seal this 30th day of June, 1943.

[Seal] /s/ RALPH B. POTTS,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Stamped]: Recorded July 2, 1943, King County, Washington.

State of Washington,
County of King—ss.

I, Robert A. Morris, Auditor of King County, State of Washington, and ex-officio Recorder of Deeds, and the legal keeper of the records hereinafter mentioned, in and for said County, do hereby certify the above and foregoing to be a true and correct copy of a Certificate of Formation of a Limited Partnership, Vault File No. 60514.

As of record in Records of King County.

Witness my hand and official seal this 10th day of May, 1948.

[Seal] ROBERT A. MORRIS,
Auditor of King County,
Washington.

By /s/ J. NACHTSHEIM,
Deputy.

Admitted May 24, 1948.

(Testimony of J. A. Johnson.)

Q. (By Mr. Potts): In the second limited partnership, was there any change with respect to any of your children? A. No.

Q. What was the difference in the two limited partnerships?

A. The only change was in Alvin's and George's change that they added another partner in there, but it didn't change the general condition; it was the same amount of money put in there but we were very anxious to get Leonard Gustafson in with us.

Mr. Potts: I think then that we will take that part of the examination up with the other general partners and save a little time.

The Court: Very well. [67]

Q. (By Mr. Potts): Now, in the formation of these limited partnerships, what, if anything, was issued to the limited partners showing their interest in the partnership?

A. I guess the only thing we issued was the statement at the end of the year when the books were closed.

Q. Was there any evidence of ownership of any kind given to the limited partners?

A. None whatsoever.

Q. Were there meetings of any kind held with the limited partners with respect to the business of the partnership? A. Never had any meeting.

Q. Was there any delegation of authority by any of the limited partners to you or to any of the other general partners?

(Testimony of J. A. Johnson.)

A. No. As general partners we looked after the work. If one would take a job and look after it to completion, he would do that; and if a job was real large like it was at Bremerton two of us would go on the job, otherwise one would take on the job and another fellow another job and that was the way we worked it all the time.

Q. Now, with respect to the financial interest of the general partners and the limited partners, how was that divided? [68]

A. I think it was about five twelfths (5/12) to the limited partners and about seven-twelfths (7/12) to the general partners.

Q. And how was your bank account carried?

A. In the Western Construction Company.

Q. Whose signatures were required to sign checks or notes?

A. We three general partners had to sign the checks, notes, and the checks, we had a right to sign, each one of us could sign checks.

Q. Would that be any one of the three signatures of the general partners on the checks?

A. Yes.

Q. Was your resolution changed after the formation of the limited partnership in that respect?

A. No.

Q. I mean the resolution at the bank?

A. No; the same thing.

Q. I say resolution—statement, or whatever it was at the bank?

A. No; there was no change at the bank.

(Testimony of J. A. Johnson.)

Q. Was there any board of trustees or directors or any so-called board of any kind set up in either of these limited partnerships? A. No. [69]

Q. Was there anyone that had the designation of president or secretary or treasurer?

A. No.

Q. No? A. No.

Mr. Payne: Now, if your Honor please, I object to that. The instruments are in evidence and we rely upon that and I object to this.

The Court: I will overrule the objection.

Mr. Payne: Very well; note an exception, please.

Mr. Potts: May I have just a minute, please?

The Court: Yes.

Q. (By Mr. Potts): Were there any minutes of any meetings ever kept by anyone in the partnership?

A. No meetings and no minutes.

Q. Were the notes paid before the end of the year 1945; any of the notes you have?

A. I am not sure now. I got the cancelled checks there. I don't remember now when they were paid. Some of those notes were paid but I can't say what time they were paid.

Q. With respect to the earnings of the limited partnership, will you tell the court whether or not there was any restriction of any kind upon the limited partners to withdraw, if the limited partner chose so to do, any earned income [70] on his investment?

(Testimony of J. A. Johnson.)

A. No. He could withdraw whatever was there.

Q. Was, in any way, any sum withdrawn or taken by a limited partner ever returned to you as general partner, as father?

A. Never. I know that Roy had drawn out even the capital, but he replaced what he had drawn more than he had coming.

Q. Let me see if I understand that.

A. Roy once drew out a little more than he had coming; he drew a check more than what was actually coming to him; but he paid that back by the way when he understood he had drawn more than he had coming.

Q. Did any of the limited partners, to your knowledge, draw money for anything they saw fit, personal expenses and so forth?

A. They all drew more or less a little now and then.

Q. Were any of these limited partners that you have referred to, or if you know any of them, not you, paid by any of the other general partners money for dependence; both fathers for support prior to the formation of either of these limited partnerships?

A. No; they were all able to take care of themselves.

Q. There were not, any of them, after the formation of either of these partnerships financially dependent upon either [71] you or any of the other general partners? A. No.

Mr. Potts: Your witness.

(Testimony of J. A. Johnson.)

Cross-Examination

By Mr. Payne:

Q. Mr. Johnson, I was not clear on the testimony you gave about the formation of the Western Construction Company, Incorporated, in 1935. I believe you stated that you and George and Alvin were the incorporators; was that right?

A. I was mistaken there; it was Roy and Lloyd and Mrs. Potts, the secretary.

Q. They were the incorporators? A. Yes.

Q. Why was that?

A. Because we did that in order to protect our financial interest until we had a chance to make enough money to pay off the indebtedness we had.

Q. In other words, you were deeply in debt as a partnership at that time? A. Yes.

Q. And you used those names to avoid using your own names? A. Correct.

Q. And was the stock issued to those three?

A. Yes. [72]

Q. Did the stock belong to those three or you brothers? A. It actually belonged to us.

Q. How old was Roy at that time in 1935? Do you know what year Roy was born?

A. I think he was born in 1910; I think that is correct.

Q. Is that correct? A. Yes.

Q. Just give the date; will you?

A. I think it is——

Q. All right; we will forget it.

(Testimony of J. A. Johnson.)

A. February.

Q. February, 1910?

A. My wife knows better than I do.

Q. So he would be about twenty years old in 1935; or twenty-five (25) years old. How old was Lloyd at that time, do you know?

A. He is seven months younger.

Q. Now, how long did that continue with the stock in the names of the three you have mentioned?

A. About five years.

Q. And then what happened? What changes were made?

A. Then we dissolved the corporation and the stock—what little earnings—went back to the three general partners again. [73]

Q. In other words, you left the stock in the names of the three right up until the dissolution?

A. Yes.

Q. But you say that the stock always belonged to you and to George and to Alvin; is that correct?

A. Yes.

Q. In equal proportions?

A. I believe it did; I am not absolutely certain.

Q. I show you a document, Mr. Johnson, and ask you if you recognize that? A. Yes.

Q. What is it, please?

A. That is an income tax statement on the corporation, isn't it?

Q. For what year? A. 1942.

Q. Was that the final return, do you know, of the corporation? A. I would think that it was.

(Testimony of J. A. Johnson.)

Q. And I show you exhibits attached to that and ask you if that does not purport to be the resolution voluntarily dissolving that corporation?

A. I believe that is what it is.

Q. And that shows the stock as belonging to you and to George and to Alvin in equal proportions, does it not? [74] A. Yes.

Q. And those are your signatures?

A. That is mine.

Q. Yours and George's and Alvin's to that document? A. Yes.

Q. And you were appointed trustee in dissolution of the corporation? A. Yes.

Q. You were? A. Yes.

Mr. Payne: May that document be marked for identification as Respondent's Exhibit A, please?

The Court: It will be marked.

Mr. Potts: We have no objection to its introduction.

The Court: Respondent's Exhibit A, do you want to offer it at this time, Mr. Payne?

Mr. Payne: I think so. There are two or three papers on that that don't belong, but we will arrange to have those detached. We will offer it, then.

The Court: All right; Respondent's Exhibit A is received.

(The document referred to was marked Respondent's Exhibit A, for identification, and was admitted in evidence as Respondent's Exhibit A.)

(Testimony of J. A. Johnson.)

Mr. Payne: Merely to show that the stock [75] belonged, to these three individuals rather than to those Mr. Johnson states was the holders.

The Court: Yes; that is my understanding of the witness' testimony.

Q. (By Mr. Payne): Now, Mr. Johnson, the corporation had been active up until 1942, hadn't it?

A. Yes.

Q. And did a good deal of construction work?

A. We did a few jobs. We were able to take enough and make enough money in that corporation to pay all the indebtedness in the Western Construction Company partnership.

Q. Now, beginning with the end of 1940, through 1941, and up to 1942, you and Alvin devoted yourselves pretty much to the partnership work, didn't you? A. All three of us did.

Q. Did George devote himself pretty much to the corporation?

A. It just happened to be on that job that was under the corporation that——

Q. Anyway, the corporation was directed by all three of you and the partnership directed by all three of you the same way? A. Correct.

Q. Was there substantial equipment and profits in the [76] corporation in 1942?

A. We didn't have much equipment in the corporation to amount to anything.

Q. What about the business connections you had in the corporation at that time?

(Testimony of J. A. Johnson.)

A. Well, that was the business connections we had; what we had along with us from years past.

Q. And when you dissolved you took over the equipment and the business and unfinished matter into the partnership, is that correct?

A. Correct.

Q. And continued it in the name of the partnership? A. That is it.

Q. That all happened in 1942? A. Yes.

Q. What was the reason for the dissolution of the corporation?

A. We always worked more or less as a family partnership in almost thirty-nine years, you might say, and we could go farther in getting our bonds and finances in the partnership than we could in the corporation because in a corporation you are only liable for what you have in it, but in a corporation you make yourself liable for everything you have got.

Q. You mean partnership? [77]

A. I meant partnership; yes.

Q. Did you ever discuss with your tax counsel or attorneys about the tax liabilities of corporations beginning about 1942, the excess profits tax?

A. No; I don't remember that.

Q. You don't remember? A. No.

Q. Were you told it would be cheaper for you forming a partnership than a corporation from a tax point of view? A. No; I don't believe so.

Q. Who was representing you at that time in your tax matters?

(Testimony of J. A. Johnson.)

A. Why we had an accountant taking and make up our statement but I don't know that we had any particular representative.

Q. Then it is your testimony that you dissolved the corporation in order to get the business back in the Johnson family? A. Yes.

Q. Now, you stated that you had some difficulty in getting finances as a partnership; was that your testimony? A. Yes.

Q. Trying to get capital? A. Yes.

Q. You did borrow capital in 1941, didn't you, and in [78] 1940, also, from the bank?

A. All we could get.

Q. As a partnership? A. Yes.

Q. Sizeable amounts in connection with the Bremerton construction job? A. Yes.

Q. And you borrowed that on the names of yourself, and George, and Alvin? A. Yes.

Q. And Mr. Erickson; who was he?

A. My brother-in-law.

Q. And was he the owner of the West Coast Construction Company? A. Correct.

Q. And that was in the Bremerton construction work? A. Yes.

Q. That is the so-called West Park job?

A. That is it.

Q. And you made substantial profit on that work, didn't you?

A. We made pretty good there; yes.

Q. After that you were able to get your finances a little easier, weren't you?

(Testimony of J. A. Johnson.)

A. Yes; in a way, and in a way, not; because the money [79] that we made at West Park, we couldn't get out for over two years; two and a half years before we got the final out.

Q. You weren't having any serious difficulty in getting money?

A. It wasn't easy because as long as you didn't have the money in the bank, you couldn't—as long as you didn't have it under your own lock and key, you don't know whether you have got it or not.

Q. What was the nature of your work, Government contracts largely, wasn't it? A. Yes.

Q. And the government paid you periodically as the work was completed?

A. It was supposed to; yes.

Q. Well, you got substantially that treatment?

A. We got our monthly payments pretty fair, but the housing authorities at Bremerton, they were willing to pay us but the housing authority in Washington held up the payment and it went so far that the housing authority at Bremerton passed a resolution criticizing the Washington authorities very sharply for not paying us because we had earned it and were entitled to it, but it took six months after that resolution before we got final payment.

Q. Well, now——

A. When you take a contract, even subcontracting, you [80] won't get the money until you get it from the government and the government was so slow in paying their payments that even the sub-

(Testimony of J. A. Johnson.)

contractors refused to sign a contract of that kind due to the slowness of the government to pay the bills.

Q. What was the practice of the partnership; to take a copy of the government contract and file it with the bank and show the bank the payments due to you upon completion of the work and then get the bank to advance you money on that basis?

A. That is only done——

Q. You did follow that method?

A. We had to do that; but even then it was a question that you couldn't understand why you had to wait so long.

Q. All right; now, when you took the notes from these children in 1942, what did you do with them?

A. I guess they were kept in our office.

Q. They were kept in the office?

A. Yes; in the safe.

Q. You didn't ever pledge them with the bank?

A. I am not sure about that whether we ever took them down to the bank or no.

Q. You don't remember that you did?

A. No; I do not. I would have to refresh my mind about that; I don't believe we did.

Q. Did you say that you made some use of them in connection with the bonds? [81] A. Yes.

Q. How?

A. We put them on our statement.

Q. How was that?

(Testimony of J. A. Johnson.)

A. We showed them on our statement.

Q. How did you show them?

A. Notes receivable.

Q. Did the bonding company ever inquire into the nature of the notes?

A. I think they did.

Q. Did you have any discussion with them about it? A. Yes.

Q. What was the nature of the discussion?

A. I explained who they were from; who those notes were from.

Q. Did they ever look into the financial ability of the children?

A. No; but if he could get notes from about ten or twelve young people, particularly young people, married and had their home, he would know that if one wasn't good—he would rather take a note from ten than he would from one. I know they knew all of them would be good.

Q. Did you tell the bonding company that they were your children? A. Sure. [82]

Q. Then what did they say about it?

A. I don't remember the discussion exactly word for word, but——

Q. Did they question whether they were good or not for your purpose?

A. Not in my presence anyway.

Q. Did they out of your presence?

A. That I don't know.

Q. Did they question it to George, or Alvin, do you know? A. That I don't know.

(Testimony of J. A. Johnson.)

Q. Did you have any difficulty in getting your bonds allowed?

A. No. We didn't have real difficulty, but we were stretching our finances just as far as we could. If we had had more finances and could have taken larger jobs, there was better chance to make money on the larger jobs than the smaller jobs.

Q. Now, these notes in evidence, which you have identified and are in evidence as Petitioner's Exhibit 2, were one year notes from April 21, 1942, weren't they? A. Yes.

Q. What about after that note was due and unpaid, did you still use them on your financial statement?

A. Yes; they were good for six years after [83] that.

Q. I just wanted to know how you treated them. So that you took that note and used it for whatever purpose you could? A. Yes.

Q. But you never put it with the bank?

A. No.

Q. Did the bonding company ever look at the notes do you know?

A. I don't remember that they ever looked at the notes; it was explained to them what they were.

Q. Did they express doubt as to their validity because they were your children? A. No.

Q. Now, Mr. Johnson, you gave some testimony about the children. You don't happen to know of your own knowledge what Mrs. Rector's financial position was in 1942, do you?

(Testimony of J. A. Johnson.)

A. Yes. I did have a statement but I think the counsel has it now, the approximate statement.

Mr. Potts: Would you like to have that?

Q. (By Mr. Payne): When did she get out of school?

A. What year was it that England got in the war, if I may ask you?

Q. Was she out of school before 1942?

A. Yes. [84]

Q. How long before?

A. She just came back from England that time and went into business right after the war with England started.

Q. And what was her husband's profession?

A. He was a doctor also.

Q. You don't know how much your daughter owned in her own right separate from her husband, do you? A. No.

Q. Let me ask you this; did you ask her husband to sign that note, too?

A. No; I don't believe I asked him to sign it.

Q. Any discussion about it in the family?

A. Yes; it was discussed in the family.

Q. And what was the discussion?

A. And he had no objection to her signing the note and coming into the partnership.

Q. But he didn't indicate any willingness to sign it? A. We didn't ask him.

Q. Don't you think that it might be that the property owned, the home and so on, was her husband's and not hers?

(Testimony of J. A. Johnson.)

A. They were buying it together, of course.

Q. You don't know whether Ohio is a community property state or not, do you?

A. No; but I think she had more than he had, as far as that is concerned. [85]

Q. But you don't know what that is?

A. Well, she had her office and equipment and business.

Q. Did she own the office or rent it?

A. Rented it.

Q. How about the equipment?

A. That she owned.

Q. You don't know how much it was?

A. No; I don't remember now.

Q. Do you know whether it was paid for or was she still paying? A. It was paid for.

Q. All right. As a matter of fact, you don't know a great deal about her financial position at that time, do you?

A. I would have to refresh my mind to be able to give it to you. She said in a letter that she had——

Q. Let me ask you, did you make the inquiries about her financial condition before or after she gave the note?

A. I made inquiry at that time and also made inquiries about it now, what her financial status was.

Q. What inquiries did you make at that time?

A. How much business did she have.

Q. What did she tell you?

(Testimony of J. A. Johnson.)

A. From fifteen to twenty patients a week.

Q. From fifteen to twenty patients a week?

A. A week. When she first started. [86]

Q. I see. So her resources were her potential ability to earn, is that it?

A. And now she has fifteen to thirty a day.

Q. But your real inquiry has been made since this tax case came up for determination?

A. Yes, I admit that.

Q. Now, what about the Jorgens family in Spokane; you say he was a pressman?

A. Yes.

Q. How much did you say he received?

A. I don't remember that off hand, how much he was getting, but pretty good wages.

Q. Was Mrs. Jorgens working? A. No.

Q. Did they have a family? A. Yes.

Q. How many children at that time?

A. Two at that time; no, one at that time.

Q. Did they own a house?

A. Yes; they owned a house.

Q. Paid for or on contract?

A. I think they owed a little money on it.

Q. And they owned some land in addition?

A. Yes.

Q. Paid for? [87]

A. That was given to them by his father, the land.

Q. How much?

A. Oh, I think it is about 200 by 300.

Q. Just a lot you mean?

(Testimony of J. A. Johnson.)

A. Yes, in the city.

Q. Was that given to them before or after the marriage?

A. At the time of the marriage and then they had some property out at the lake. I don't remember the lake, but in the country there.

Q. When were they married? How long before 1942, do you know?

A. Oh, they must have been married five or six years then.

Q. Well, now, was Mrs. Rector here when the partnership agreement was signed? A. No.

Q. Did you send it back to her for signature?

A. Yes.

Q. What about Mrs. Jorgens?

A. I am not sure whether she was here or sent to her too.

Q. How did the question of this new partnership come up in 1941 or 1942, Mr. Johnson?

A. Well, we wanted particularly to get the boys into the business with us. [88]

Q. Did you have a previous plan for that in 1941?

A. We had had a plan for that all the time that we would get them in but it looked like they were drifting away from us instead of coming in. There was other attractions and we wanted to try to get them in with us to help us.

Q. You had another plan in 1941 to get them in?

A. Yes, the three boys.

(Testimony of J. A. Johnson.)

Q. Why didn't that succeed?

A. It succeeded to a certain extent.

Q. What do you mean by that?

A. They were still with us, some of them.

Q. Isn't it a fact that the boys were unwilling to stay with you in 1941; they were unwilling to tie up to any arrangement?

A. No; they weren't unwilling. If they were, they wouldn't have signed the note.

Q. When did Lloyd go with Kuney of Spokane?

A. About 1941, I think.

Q. And assumed a partnership with Mr. Kuney?

A. Yes; I understood that at that time. It was for one particular purpose.

Q. But it ripened into a permanent relationship? A. Yes.

Q. Where is the Kuney activities, in Spokane or in Seattle, do you know? [89]

A. At that time he had his office in Spokane and also here in Seattle, but I believe now that they just have the office in Seattle, but I am not sure.

Q. I see. Well, now, did you have a discussion about this family arrangement with your tax counsel and with your lawyer?

A. Not with a tax counsel; when we made up this agreement, we took it up with our attorney, of course. Had it made up so that it would be legal.

Q. Who drew up the agreements for you.

A. Mr. Potts.

Q. What did you tell Mr. Potts that you wanted to take the children into the business?

(Testimony of J. A. Johnson.)

A. Yes, sir

Q. And did you discuss with him the methods you could use to do that? A. Yes.

Q. Did he discuss with you the details of what the children were to do? A. Yes.

Q. And you had an understanding that the girls wouldn't work for the partnership, didn't you?

A. We didn't consider the girls so much as we did the sons-in-law.

Q. Well, you didn't provide for the sons-in-law in the [90] agreement, did you?

A. No; we just had our children sign, but we were particularly after our sons-in-law, to get them into business.

Q. But you weren't successful in getting any of them? A. No; we didn't.

Q. You stated on direct examination that the purpose of the partnership was to use the children; will you tell the court what you meant by that? You mean to use the sons?

A. To use the sons and use the notes as financial backing.

Q. You mean the notes that you took from the children? A. Yes.

Q. When you say you wanted to use the children in the business, you meant just the sons?

A. Well, the girls had been working with us some time before too. Eleanor worked in the office a long time and so did Evelyn, up until the time she got married, and during the time that Eleanor

(Testimony of J. A. Johnson.)

was in school, why she worked in the office every summer.

Q. How long was that?

A. Oh, that was about over five or six years, probably, before that, on account of she went back to medical school.

Q. What about Evelyn Jorgens, how long before 1942 did she work for the partnership?

A. Oh, about four or five years, I guess. [91]

Q. In fact, none of them worked for the partnership in 1942 or later, did they?

A. My youngest daughter was working in the office at that time.

Q. But she is not involved in this?

A. She is not involved here.

Q. I see. And of the sons-in-law who did work for the partnership, the only one was Mr. Gustafson? A. Yes; I believe so.

Q. And what year was that that he came to work for the partnership?

A. 19—I think he worked for us in—'41.

Q. Nothing after that?

A. No; I don't believe so.

Q. Nothing after 1941? A. No.

The Court: We will recess now until 2:00 o'clock, p.m.

(Whereupon, at 12:30 o'clock, p.m., a recess was had until 2:00 o'clock, p.m., May 24, 1948.) [92]

Afternoon Session
2:00 o'Clock P.M., May 24, 1948

The Court: You may proceed, Mr. Payne.

Whereupon,

JOHN A. JOHNSON

a witness called on behalf of the Petitioners, having been previously sworn, resumed the stand for further exmaination.

Cross-Examination
(Continued)

By Mr. Payne:

Q. Mr. Johnson, at the close of the testimony before we adjourned, I believe you said that Mr. Gustafson did not work for the partnership at any time after 1941, is that right?

A. No, I do not believe that he actually worked for us, except he might have looked over some of the estimates and so on, but he never put in full time there.

Q. He went back into some other business, you say? A. Yes, sir.

Q. For himself? A. Yes, sir.

Q. Mr. Johnson, what contracts did the partnership have on February 24, 1942, at the time of the formation of this limited partnership? What contracts did the old partnership have at that time?

A. Well, it was just about the time, I think, that we [93] had the Holly Park Housing Project. I am not sure, but it was somewheres around in there. No, it was before we got that job.

(Testimony of J. A. Johnson.)

Q. When did you get this work—this housing project down toward Renton—the Renton-Rainier Project? A. That was later.

Q. I will ask you again what contracts you did have in February, 1942.

A. I think we had what they called the Rainier Vista Housing Project.

Q. Do you know the date that you signed that contract?

A. No, but it was that Fall—in the Fall some time.

Q. In the Fall of 1941? A. Yes, sir.

Q. So you would say that you signed that contract as partners before the formation of the new limited partnership?

A. I believe that that is correct.

Q. What other contract did you have?

A. I think that that was the only contract we had at that time.

Q. And how much of a job was that?

A. Well, that is something that I cannot remember now.

Q. Would it run into a million dollars, say?

A. I do not think it would run into a million, but probably close to a million. [94]

Q. I believe you said that the West Park Project at Bremerton had practically been completed.

A. Yes.

Q. How large was that job—how much of a job was it? A. I believe that was $1,800,000.

(Testimony of J. A. Johnson.)

Q. Then you had some supplementals on that, didn't you?

A. I think that that included the supplementals.

Q. In the neighborhood of $2,000,000?

A. Yes, sir

Q. Now, you had quite a bit of work in process then in February, didn't you?

A. I think that is the only job that we had.

Q. In the Rainier Vista? A. Yes, sir.

Q. And you borrowed sizable amounts of money, didn't you, in 1941, Mr. Johnson?

A. Yes, we did.

Q. What would you say that that amount or those amounts were—in excess of $100,000?

A I don't remember. I would have to look at the books before I could answer that, because I don't remember now just what we borrowed.

Q. It took quite a bit of capital to run those big jobs, didn't it? A. Yes, it did. [95]

Q. Now, getting back just a moment to these notes which you gave testimony about, what is your understanding of the situation at the time that the new partnership was created? Did you as a father of the children who came into that partnership give them any money? A. No.

Q. The partnership agreement which is in evidence—may I have that please, Mr. Clerk—I call your attention to Petitioner's Exhibit 1, which is the first limited partnership agreement, and I notice therein a statement of the capital accounts—para-

(Testimony of J. A. Johnson.)

graph 4 of that agreement—"That the amount of cash contributed by each limited partner is as follows:

"$10,000 by each limited partner, except Roy W. Johnson, Eleanor Rector, and Evelyn J. Jorgens, who contributed $6,666.66 each."

Now, how were those amounts contributed? Can you clarify that for the record?

A. I think that this was the idea, that we had $10,000 in there—I am not sure that I have got this correct myself now—and that each limited partner had $6,666.66. Is that what that indicates?

Q. Well, I am just asking you. How did the limited partners contribute their share?

A. By money. [96]

Q. Was an amount set up on the partnership books for the limited partners? A. Yes, sir.

Q. And that amount then was taken out of the interest which you formerly had, is that right?

A. They gave me a note for the interest of $6,666, which would swell our capital by that note. note.

Q. That is what you say?

A. I think that that is clear, isn't it?

Q. Then what did you do—you had to set over to them a credit on your books for that amount, didn't you?

A. I am not a bookkeeper, so I don't know exactly how you set it up on the books.

Q. You don't know then?

A. But naturally they were credited with

(Testimony of J. A. Johnson.)

$6,666.66, because they put that in—even if they didn't put it in in cash they put it in by a note.

Q. And by doing that how would the partnership be richer after than they were before?

A. Well, we had $60,000 of notes in the partnership, and those notes were good.

Q. But those notes offset equal amounts which you credited to the individual limited partners, didn't they?

A. Well, we were just $60,000.00 better off after we had those notes than we were before. Even though it was not actually [97] in cash, it was in notes, but we were $60,000.00 better off financially than we were before.

Q. You mean that you were better off or the partnership was? A. The partnership was.

Q. But the notes were given to you individually, weren't they?

A. Yes, but when we signed for bonds and had a note in the bank—we were not in a corporation you see, we were in a partnership, and when we signed on the dotted line, we signed everything away that we had.

Q. When you agreed to give your children some share of that for their notes, you took the same personally for what you gave them, isn't that correct? A. Well, we still had the same capital.

Q. Now, what do you mean by that?

A. Well, I didn't pay them the cash. They owed me that $6,666 on a note, and I still had the same amount of capital that I had before.

(Testimony of J. A. Johnson.)

Q. But they owed you that note personally. They didn't owe it to the partnership—your children didn't owe it to the partnership, did they?

A. They owed it to me personally, but I had to sign for the company. We were $60,000.00 better off on account of those notes. [98]

Q. You mean you were, or the partnership?

A. The partnership.

Q. How was the partnership any better off? That is what I want to know.

A. We were $60,000 better off.

Q. The notes didn't belong to the partnership.

A. Yes, but——

Q. (Interposing): Now, wait a minute. You say "Yes," but do you mean yes or no? The notes were yours, or were they the partnership's?

A. The notes belonged to me personally because I had borrowed the money personally, but when we came to get a loan, or for our financial purposes, it didn't make any difference whether it belonged to the partnership or whether it belonged to me personally. As a partnership we had to sign on the dotted line, on the notes, or on the bonds, or on any finances that we had to get, we had to sign for it, and we obligated all our capital or all our belongings together when we signed the note.

Q. You mean you, George and Albin did.

A. Yes, sir.

Q. And that was so because you were general partners, isn't that right? A. Yes, sir.

(Testimony of J. A. Johnson.)

Q. So when you went to get credit you used all your [99] personal assets and resources in order to get it? A. That is correct.

Q. That is how you used the notes?

A. Yes, sir, that is correct.

Q. To get credit? A. Yes, sir.

Q. But you testified that you did not put the notes up with the bank. You said you just used them for the purpose of your satisfaction bond?

A. I don't know that we ever put them up to the bank.

Q. Do you know what the amount of your stated partnership interest was just before the formation of this limited partnership? A. No, I don't.

Q. Now, you gave some testimony about Lloyd going with Kuney, and you said that that was in 1941, according to your recollection.

A. Yes, I believe so.

Q. And you said that he did some work for the Western Construction Company. A. Yes.

Q. Did he do any after the formation of the new partnership?

A. Yes. That was just about the time when we needed him the worst. [100]

Q. All right. What did he do, and when?

A. Mostly estimating.

Q. Wasn't Lloyd pretty busy with the new job that he had?

A. Yes, but he could always spare an evening or an afternoon, or some time, because when it came

(Testimony of J. A. Johnson.)

to put over estimates and pricing things, if this had been in 1929 you had pretty near a good guide to go by. But now things were going up so fast that you had to compare notes and counsel in order to be able to determine what things were costing today. It was not what it cost yesterday, or last month, or last year, but what it cost today, on account of things changing so fast.

Q. Didn't Lloyd go to Spokane when he got that new connection?

A. Why, he was in Spokane, back and forth, I believe, but I think he was here in Seattle the biggest part of the time.

Q. Tell me when he did the first work for you in 1942, and what it was.

A. Why, he was in probably two or three times a week, and sometimes oftener in our office. I cannot say just when he did the work, or just what job he actually was helping us with, because we were figuring on work every day, and every week we were turning in some bid. [101]

Q. Tell the Court whether he just talked to you in the office, or did he go out and look at the jobs.

A. Well, it was not so much going out and looking at the jobs as it was to look over and try to price the quantities after the quantities were taken off, to determine how much it would cost to do the work.

Q. Can you tell me how much time he spent in your office in 1942?

A. No, I cannot say how much time he spent in our office in 1942 because——

(Testimony of J. A. Johnson.)

Q. (Interposing): Well, then, you cannot give the Court some reasonable idea of that, can you?

A. I cannot say how much time he spent. But to get a man in that knew something, who was willing to give you the best knowledge he had on it, that was not easy. You had to get your own relatives that were interested in it with you. You could not call in any other man and have him give you that information. You had to call on your own relatives to get that information and get that counsel.

Q. You think that he might have done that for you because you were his father?

A. Why, naturally it was in his own interest.

Q. I didn't ask you that. But entirely aside from any partnership relationship, don't you think that he might have been willing to give that to you or to one of the other boys [102] if you asked him?

A. Why naturally, when you have an interest in it, and you were naturally vitally interested in it, you would be willing to spend a little extra time to see that we made money.

Q. You didn't pay Lloyd anything for anything that he did for you, did you?

A. No, we did not. I spend a lot of time that I don't get paid for either.

Q. Can you tell us how much time he spent for the Western Construction Company in 1942, 1943, 1944 and 1945—how much time he spent during those years on this work that you speak of?

A. Not any more than that I can tell you how much time my attorney spent on it. It was time that

(Testimony of J. A. Johnson.)

was vital to us, that he would come in and go over those estimates. How much time he actually spent, I don't know, because sometimes he would go over the bids with me, and sometimes he would go over them with Albin and George, and sometimes he would even go over them with my brother at home in the evening.

Q. But you cannot identify any jobs or any particular bids that he worked on, can you?

A. I say I know the jobs that we did have. We got the Holly Park job, and we got the Renton Housing Project, but we figured on other jobs. I would say that it was almost every week that we put in a bid on some job. We figured on lots of [103] work that we never got.

Q. Now, Winston, you say that he worked for the partnership right through the period.

A. Correct.

Q. And you stated that he was in the Army during the war years. Now, what years were those?

A. I am not certain when he came back. He came back in 1941.

Q. When did the war begin, do you remember?

A. In 1940. I think that he came back in 1941. He was in just a short time, I know.

Q. He came back before the war started then?

A. No.

Q. All right. You say that his education was that he had some engineering training?

A. He had three years at the University of Washington.

(Testimony of J. A. Johnson.)

Q. And what was he doing in 1942 for the partnership?

A. Mostly estimating and office work.

Q. What kind of office work?

A. Estimating and buying of material, and ordering the material, and watching that the material got to the job.

Q. Who did the estimating before the boys came with you?

A. Well, we did some estimating ourselves, and then we hired estimators.

Q. What kind of a job would Winston estimate? Would he [104] estimate on the taking of a large job or a large contract?

A. Yes. He worked on almost every job that we had. And we had another man there too, helping him, but they worked together.

Q. You mean estimating what the cost would be in determining whether you should take the contract?

A. Mostly taking off quantities off the plan.

Q. How is that?

A. Mostly taking off quantities off the plan and ordering materials.

Q. Do you know how much you paid Winston?

A. I think he was paid 80 some odd dollars a week—between $80 and $90 a week.

Q. How much did you pay your other estimator?

A. About the same thing.

Q. You stated that you got the notes for the purpose of using them in your business?

(Testimony of J. A. Johnson.)

A. Correct.

Q. How much were you paid for the money that you were borrowing?

A. Six per cent, I believe.

Q. You knew that you had made some sizable profits in 1941 in the partnership, didn't you?

A. Yes, sir.

Q. And you expected to make some in 1942 on the contract [105] that you then had in process, didn't you?

A. You never know what you are going to make. You don't know whether you are going to make it or lose it.

Q. But you naturally expected to make it?

A. Why naturally you hope to make something.

Q. Do you know how much profits were credited to the account of these prospective limited partners the first year—1942?

A. No, I have not got the figures.

Q. You know that it was a large amount, don't you?

A. Why, I don't know how much it was, but I know that we made some profits.

Q. Well, we will develop that. Roy didn't do any work for the partnership in 1942, did he, Mr. Johnson? A. Yes, he did.

Q. What kind of work did he do?

A. He did engineering work.

Q. Why didn't you pay him for that?

A. We did.

(Testimony of J. A. Johnson.)

Q. Do you have records on that?

A. I am pretty sure that we have.

Q. I show you a document, and I will ask you if you know what that is. (Handing document to witness.)

A. This is a partner return income—a partner income return for 1942. [106]

Q. I will ask you to examine the schedule attached thereto and refresh your memory about the amounts paid for time devoted to the business, and I call your attention to Roy Johnson's name on that schedule.

A. I thought that he was with us in 1942.

Q. The return doesn't show any payments to Roy, does it, that year?

A. You can hardly prove it by me, but you can by the books.

Mr. Payne: I will have this marked for identification as Respondent's Exhibit B, if your Honor please.

The Court: It will be identified as Respondent's Exhibit B.

(Document above referred to marked Respondent's Exhibit B for identification.)

Q. (By Mr. Payne): You just don't recall now what the situation was as to Roy in 1942?

Mr. Potts: May I look at that return?

The Court: Yes, you may.

Mr. Payne: Certainly. Handing document to Mr. Potts.)

(Testimony of J. A. Johnson.)

Q. (By Mr. Payne): And now, he went to Alaska in what year—1944, wasn't it? [107]

A. 1944, yes.

Q. And what time of the year—what month was it that he went to Alaska?

A. Oh, it was in the Spring, I believe.

Q. And he didn't work with you any more in that year or 1945, did he? A. No.

Q. How much did you pay Roy? Do you remember the scale or salary that he got?

A. No, I don't remember that.

Q. You paid him about the same schedule or scale that you did other men doing the same work, didn't you?

A. No. I think he was paid a little more.

Q. You think that you paid him a little more?

A. Yes.

Q. Why do you think that you paid him a little better?

A. Well, he had more experience. I know the job that Roy worked on, but I might be a little mistaken on the date or what time it was.

Q. Now, Mr. Johnson, you testified as to the partnership agreement which is before you as Petitioners' Exhibit 3, the one entered into in June of 1933. Why were the additional children taken in at that time?

A. Well, so far as I know the main reason for that was to get Leonard Gustafson in with us, so as to get more [108] capital, and by getting more fellows in there we would get more capital. It would

(Testimony of J. A. Johnson.)

not increase the capital, but we wanted more of the family in there because each one had some income.

Q. What do you mean by that? I don't understand you. You wanted the whole family in for what reason?

A. To have more income—to get better backing—the more fellows that we got in there.

Q. Did Gustafson come in there in 1943?

A. Yes.

Q. I thought you said that he was out and didn't come in with you; that he didn't work for you even in 1942.

A. No, he didn't work with us, but he came in with us on that note there.

Q. Do you have a note for Gustafson?

A. For Mrs. Gustafson.

Q. For Mrs. Gustafson?

A. I don't know which one signed the note—whether he or she signed the note, but it didn't make so much difference because it was a family partnership anyhow.

Q. But Gustafson didn't come to work for the partnership, did he? A. No, he never did.

Q. So what you mean is you did it to get another note, is that it? [109]

A. Well, we got another note, although it didn't increase the capital or anything, but he was making money. He was pretty well fixed even at that time.

Q. I asked you if he ever did sign a note, or if you know whether he did or not.

(Testimony of J. A. Johnson.)

A. No, I don't know for sure. I don't know if he ever signed it personally.

Q. Now, Rachel Gustafson is George's daughter?

A. Yes.

Q. I see. And you say that no additional money was received?

A. No additional money was received. There was additional notes but it was not any more money.

Q. In other words you did not bring any additional children in that year?

A. No, I did not.

Q. The other boys did? A. Yes, sir.

Q. They simply split off the amounts that the other children had been given and divided it among the new children coming in?

A. That is correct.

Q. Now, you testified that the three partners signed all checks. That was so before the new partnership was formed, wasn't it? [110]

A. Yes, sir.

Q. That is, you mean any one of the three could sign them?

A. Any one of the three could sign them, yes, sir.

Q. And there was no change in that afterwards?

A. No.

Q. Was your bank account changed at all?

A. No.

Q. And none of your records were changed?

A. No.

Q. What about the contracts you already had?

(Testimony of J. A. Johnson.)

Did you give notice to the people from whom you had contracted work that you had changed your partnership? A. No. It was not necessary.

Q. When you entered into new contracts after that there was no change from the previous operations, was there? A. No.

Q. You and George and Albin were the managers of the business, weren't you?

A. That is correct.

Q. You testified that you never had any formal meetings. A. No, we did not.

Q. But you did have meetings, didn't you, to discuss your problems in your office, and in your homes, and on the jobs? [111]

A. When we were figuring jobs, of course we naturally had to get together and use our best noodles.

Q. You didn't have any written record of what you decided then? A. No.

Q. You gave some testimony that you thought Roy had drawn out more than he had coming to him. I didn't understand that.

A. Yes, I understand that he drew out at one time more than he had coming.

Q. You mean when he went to Alaska?

A. Yes.

Q. Roy is your son? A. Yes.

Q. Did you discuss with him his need for money at that time? Did he ask you about it?

A. No, I don't think that he did. Not that I remember.

(Testimony of J. A. Johnson.)

Q. How did he get the money?

A. The bookkeeper knew that it was his money, and when he asked if he could have it, why it was given to him, but then they discovered afterwards that he was overdrawn and then he paid it back again.

Q. Who was the bookkeeper?

A. Mrs. Potts.

Q. Would she do that without talking to you ordinarily? [112]

A. Yes. This was a family partnership, and she knew that there was not any question about it. We helped each other out wherever we could.

Q. And knowing that he was your son, why she probably would expect you to take care of it if she did it, is that correct?

A. She knew it would be taken care of. Anyway she knew that Roy would take care of it himself, as far as that is concerned, which he did.

Q. Did he use it in his business?

A. He used it up there in Alaska.

Q. Did he ever give you a note or anything to take care of the amount that he took?

A. No, he did not. When it was discovered, he made out a check and paid it back.

Q. You stated that so far as you knew there were no restrictions on the limited partners drawing out their money. A. No.

Q. You didn't encourage them to draw it out, did you?

A. No, we didn't encourage them. If they didn't

(Testimony of J. A. Johnson.)

need it, why we didn't encourage them to draw it out. In fact, we didn't draw out any more ourselves than what we actually needed—the three partners.

Q. Did anything come up about these taxes that these children would go in the partnership? [113]

A. How do you mean?

Q. Did the question come up how they were going to pay the taxes on their share of the earnings under the partnership agreement?

A. Well, if they didn't make any money they wouldn't have to pay taxes, would they?

Q. I beg your pardon?

A. If they didn't make any money they would not need any money to pay taxes on, would they?

Q. Do you know where the tax returns were prepared? Were they prepared for them there in your office?

A. I think that they were. I think that they helped to prepare them.

Q. Did you arrange to pay the taxes directly for them in some cases?

A. I am not sure, but in some cases we might have.

Q. How about the returns of their husbands or wives that were not your children? Were they also prepared there in your office?

A. That I don't know.

Q. You don't remember? A. No.

Q. Now, just one or two other questions, Mr. Johnson. You stated that the children understood

(Testimony of J. A. Johnson.)

that if they signed these notes they might have to pay them in the case of failure, [114] is that correct? A. That is correct.

Q. Did they understand that that was the limit of the amount that they would be liable for under the arrangement? A. Yes, I think so.

Q. You didn't expect them to have to pay those notes, did you?

A. Well, it was hard to know offhand whether they would make anything, or whether we would lose. The contracting business is the biggest gambling business there is.

Q. But you have done pretty well at it, haven't you?

A. Well, I have done good and I have done bad.

Q. When you made substantial profits the first year, why didn't the children pay those notes to you, do you know?

A. I don't know really why they did not. As far as I know—as I said before neither one of us three general partners drew out any more than just what we needed, and it was left in the pot there altogether anyhow, and we didn't pay so much attention to it so long as the money was there.

Mr. Payne: That is all.

Redirect Examination

By Mr. Potts:

Q. Mr. Johnson, showing you the income tax return for 1942, marked as an exhibit by the Respondent—as Respondent's Exhibit B—you were

(Testimony of J. A. Johnson.)

questioned about Roy working. I direct [115] your attention to "Addresses and time devoted to business of above respectively," on the first page, and I will ask you to examine Roy Johnson's name in that regard. Is it there?

A. Roy Johnson is on there.

Q. What does it show?

A. It shows his home address, and so on.

Q. Well then over here it says, "Addresses and time devoted to business of above respectively," and what does it show with regard to the time that Roy Johnson spent in 1942?

A. It just says, "Part time" there.

Q. Part time? A. Yes, sir.

Mr. Potts: You wish to offer this, Mr. Payne, no doubt. If you do we have no objection to it. You had it marked for identification.

Mr. Payne: We will offer it in evidence.

The Court: It may be received as Respondent's Exhibit B.

(Document heretofore marked Respondent's Exhibit B for identification, received in evidence.)

Q. (By Mr. Potts): Now, Counsel asked you whether, with regard to any of your contracts, you notified the owner or the person with whom you were contracting of the change of your partnership. [116]

First of all, Madam Clerk, will you mark this for identification?

(Testimony of J. A. Johnson.)

(Document above referred to marked Petitioners' 4 for identification.)

Q. (By Mr. Potts): Showing you Petitioners' Exhibit 4 marked for identification, will you tell the Court what that is?

A. We just notified the Austin Company about that limited partnership. I didn't know that we had, but I notice here that we did, however.

Q. And this letter is what—an acknowledgment, is it? A. An acknowledgment, yes.

Q. And this is dated when?

A. This is dated September 22, 1943.

Mr. Potts: We offer that, if the Court please, in evidence.

Mr. Payne: This pertains to the second limited partnership?

Mr. Potts: That is right.

Mr. Payne: No objection.

The Court: It may be received in evidence as Petitioners' Exhibit No. 4.

(Document above referred to, heretofore marked Petitioners' Exhibit 4 for identification, received in evidence.) [117]

Q. (By Mr. Potts): Will you explain your relation to the Austin Company at that time?

A. They were the architects on the Boeing contract. They were architects and engineers down there.

(Testimony of J. A. Johnson.)

Q. Is that one of the contracts you have testified you were the successful bidder upon?

A. That was the cafeteria building and the food service building, where Roy was the foreman and the superintendent on the food service building.

Q. Now, with relation to the investment of your limited partners, and when I say, "Your limited partners," I mean Roy, Eleanor and Evelyn, you—Madam Clerk will you mark this for identification and then I will show it to Counsel?

(Document above referred to marked Petitioners' Exhibit 5 for identification.)

Mr. Potts: This is Petitioners' Exhibit No. 5, for identification, Counsel, and that is a copy prepared from this. (Indicating.)

Mr. Payne: What is its purport?

Mr. Potts: This is the deposit of the money for those notes.

Q. (By Mr. Potts): Showing you, Mr. Johnson, Petitioners' Exhibit No. 5 [118] marked for identification, that is a copy, is it not, of this particular deposit slip which is still in the book and which I am showing you?

A. Yes. This is the deposit slip of the money that was paid back to Western Construction Company by Roy Johnson, Eleanor and Evelyn Johnson, $20,000. That was paid the 28th of May, 1942.

Q. And in what amounts each?

A. $6,666.66 each.

(Testimony of J. A. Johnson.)

Mr. Potts: We offer the duplicate, if the Court please, in evidence.

The Court: You say that it was paid in 1942?

The Witness: Yes.

Mr. Payne: That is a surprise to me, your Honor. I did not know that, and I don't think that the witness did.

Mr. Potts: Well, he may have forgotten it.

The Witness: I had forgotten it also.

The Court: May 28th?

The Witness: Yes.

The Court: That is, it was deposited May 28, 1942, was it not?

The Witness: Yes.

The Court: All right. It will be received in evidence as Petitioners' Exhibit No. 5. [119]

(Document above referred to, heretofore marked Petitioners' Exhibit 5 for identification, received in evidence.)

Q. (By Mr. Potts): Now, I think, Mr. Johnson, you stated that you did not believe any of the sons-in-law worked for the company. Are you correct about that?

A. On refreshing my mind I know that Mr. Alexson——

Q. (Interposing): Alexson or Ellingson?

A. Ellingson—why, he worked for us ever since he came back from the Navy or from the Army. He worked for us right straight through.

Q. And whose husband is Mr. Ellingson?

(Testimony of J. A. Johnson.)

A. That is Betty Johnson's husband, or George's daughter's husband.

Q. And she is one of the limited partners?

A. Yes, sir.

Mr. Potts: Your witness.

Recross-Examination

By Mr. Payne:

Q. I show you Petitioners' Exhibit No. 5 and ask you when you first saw that.

A. Oh, I have seen that, but I forgot about it.

Q. Do you recall, or do you know where the money came from that went into that deposit? [120]

A. That I don't know. The bookkeeper would know that, but I don't know.

Q. Do you remember collecting interest from these children for the amount of their notes?

A. Yes, sir.

Q. For 1942? A. We got interest on that.

Q. Did you get the interest from them after 1942, do you know? A. No, I don't think so.

Q. You don't remember? A. No.

Q. Did they pay you this money or did this come out of the business, or what do you know about that?

A. That I don't know.

Q. You don't know anything more than it appears on these slips here?

A. I remember seeing it, but I have forgotten now exactly how it came about.

(Testimony of J. A. Johnson.)

Q. Do you know who wrote these names on here?

A. Mrs. Potts.

Q. Mrs. Potts?

A. Yes, sir. She depoisted it.

Q. And that is all you know about it?

A. Yes, sir. [121]

Q. When did Mr. Ellingson come back from the Navy?

A. I don't remember now. 1943 I would say.

Q. What kind of work was he doing?

A. Why, he was doing carpenter work, and then he was out chasing for materials—getting materials.

Q. Do you know how much you paid him?

A. No, I don't remember that. I don't remember how much he was paid, but he was paid the same as the rest of the fellows doing the same kind of work.

Q. Mr. Johnson, do you have available in the Court Room a record of your withdrawals in 1942?

A. My withdrawals?

Q. Yes. A. I don't know—is it?

Mr. Potts: Yes.

Q. (By Mr. Payne): Do you remember drawing money out of the partnership of about $20,000 on or about April, 1942?

A. I don't remember, but that is possible.

Q. You don't remember? A. No.

Mr. Payne: That is all.

Mr. Potts: That is all.

(Witness excused.) [122]

Mr. Potts: I will call Mr. Granston. I am calling him a little out of turn, but then he is a short witness. Is that agreeable, Mr. Payne?

Mr. Payne: That is all right.

Whereupon,

FRANK OSCAR GRANSTON

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. Will you state your name and address, Mr. Granston?

A. Frank Oscar Granston. I live at 4558 4th N. E., Seattle.

Q. Mr. Granston, what business are you engaged in?

A. I am in the plumbing and heating contracting business.

Q. How long have you been engaged in that business in this community? A. Since 1920.

Q. Mr. Granston, can you tell the Court whether or not some time in 1941 you had any conversation with either of the general partners of the Western Construction Company, George Johnson, J. A. Johnson or Albin Johnson, regarding that company? [123]

A. I have had conversations with both John and George Johnson, and there were several times they have asked me to go into ventures with them on

(Testimony of Frank Oscar Granston.)

contracts. They were short of money, and they wanted me to go along with them on different jobs, that I should put some of my money in and I would get a certain percentage of that contract.

Q. Directing your attention to 1941 can you tell the Court whether approximately in that year or some time near that year you had such a conversation with either George or J. A. Johnson?

A. I will go into more detail on that, if you wish me to.

Q. Yes, I wish you would do that.

A. In 1940 we actually did consummate a joint venture, and also even did bid on a job at Fort Lewis. That was not awarded to us. And then I know there were several times there in 1940 and 1941 where they asked me to go in, and I was busy with something else and I did not care to go into it, and so I told them, "No, I don't care to go in." But as far as the dates are concerned, I don't know what they would be, and I do not know what the jobs would be, but I knew that several times—it may have been more than several times, but I know that there have been several times that they have asked me if I would go along with them and put some money in with them on some of their projects. [124]

Q. Would you say that it was approximately during the period that I have mentioned?

A. It has been in 1940 and 1941.

Mr. Potts: Your witness.

Mr. Payne: No questions.

(Witness excused.)

Mr. Potts: I will call George Johnson.

Whereupon,

GEORGE JOHNSON

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Potts:

Q. Will you state your full name and address?

A. George J. Johnson.

Q. Where do you reside?

A. 4560 55th Avenue N. E.

Q. In Seattle, Washington?

A. In Seattle, Washington.

Q. Mr. Johnson, how long have you been a resident of Seattle, Washington?

A. Since 1907.

Q. Where did you reside prior to 1907?

A. Winnipeg, Canada. [125]

Q. How long did you reside in Winnipeg?

A. About two years.

Q. And where did you reside before that?

A. In Sweden.

Q. Are you a citizen of the United States of America? A. Yes.

Q. Naturalized? A. Yes.

Q. In what district? A. In Seattle.

Q. In the Seattle district? A. Yes.

Q. Now, what business have you been engaged in during the period that you have recited to us?

(Testimony of George Johnson.)

A. Well, the first year or year and a half why I worked for others as foreman here in Seattle.

Q. You are referring to 1907, are you?

A. Yes.

Q. All right.

A. But then we started in a small contracting business here in Seattle, building small homes, and so forth, and gradually got into a little larger work, and so forth.

Q. Did you work alone? You said that you started building small homes, and then you got into larger work. Were you working alone? [126]

A. No. My first partner was Anderson. He stayed only a short while. And then J. A. Johnson came in with me, and from there on we have worked together. We called ourselves the Johnson Brothers for quite a few years. And then during the first world war why, on the advice of our bank, they said, "Why not change to something else and take another name?" and we took the name of the Western Construction Company, which we have maintained, you might say, since that time.

Q. That was you and J. A. Johnson, the gentleman who was the first witness for the Petitioners here?. A. Yes, sir.

Q. And did you take in any other partners prior to the formation of the limited partnership here in question?

A. Yes. In 1934 when we figured the Coulee Dam bridge piers, we took in Albin with us.

Q. Is Albin any relation to you and John?

(Testimony of George Johnson.)

A. He is a brother of ours.

Q. And what happened after that period of time, and after you formed the partnership with Albin?

A. Well, after we got started the three partners—when we got started as three partners why we then were battling building this Coulee Dam project—building under this Coulee Dam contract, which was a tough one. And as already testified to we lost just about everything that we had. Of course if we had liquidated at the time we would not [127] have been able to pay up the bills. But with the maneuvering of incorporating—the incorporation was held under Lloyd Johnson—I think he was named as president, and Roy and Miss Lucille Easterbrook, as she was then—we were able to start to make a little so that we could pay up our old debts, and we finally got a little bit on our way again to recovery. But it was a tough road. And we tried every which way we could to get a little safer so that we could commence to figure work in higher brackets.

Q. Just a minute. Let us fix the date. Do you recall about when the corporation was formed—about the date?

A. Well, the corporation was formed, I should say, in 1936. I am not quite sure on that date.

Q. Do you recall about when it was dissolved?

A. Well, there was no more work taken in under the corporation after 1940, but I do not think it was dissolved until some time in 1941.

(Testimony of George Johnson.)

Q. Now, you mentioned Lloyd, who is your son, is he not? A. Yes, sir.

Q. And Roy and Miss Easterbrook, who is Mrs. Potts at the present time. A. Yes, sir.

Q. And did they have the stock issued to them, or was the stock issued to someone else in this corporation?

A. Well, the stock—they were officers, but really the [128] stock belonged to the partners, as I understand it.

Q. I will ask you if the stock was ever transferred from their names prior to the dissolution—before the dissolution.

A. I think it was transferred from their names to the partnership's before it was——

Q. (Interposing): You mean then to yourself and J. A. Johnson and Albin?

A. That is right.

Q. Now, will you tell the Court the reasons you had for the formation of the limited partnership?

A. Well, we were constantly looking forward to being able to take the larger work. But before it was well to take a plan and start and figure, you had to contact people to see if they would furnish a bond in that amount, and most of the time we heard, "No." So we were not able to reach the goal or even start to figure on it. So we called in Philip Johnson of the Boeing Company, because we knew him pretty well. We had built his home, and after

(Testimony of George Johnson.)

considering it a little bit why he says, "No," he was going to use his money elsewhere, and we found out that he was not interested.

Q. I am not quite sure that I understand you. You called in Philip Johnson, you say?

A. Yes, sir.

Q. For what purpose? [129]

A. And asked him if he would be willing to put in $25,000 or $50,000 with us—if he would not invest some money with us.

Q. Are you referring now to the partnership?

A. Into the partnership—yes.

Q. All right.

A. But he answered us declining that request.

Q. Do you know where Mr. Johnson is now—Philip Johnson?

A. Mr. Johnson passed away a few years ago.

Q. Go ahead.

A. We then asked Clyde Phillips who was also at that time one of the bonds salesmen here in Seattle, if he would take some of his private money and put it in with us, because he was furnishing bonds for us. But he could not furnish the bonds for the jobs that we wished to figure on. Well, he of course would have put in money with us, but of course he would have wanted such a huge part of the partnership, so that we would have been working for him rather than for the Western Construction Company.

So then we saw Granston of the University Plumbing Company.

(Testimony of George Johnson.)

Q. The gentleman that just preceded you on the stand?

A. Who just testified, yes, sir. We have known him very well for many years. But, of course, he has a business [130] of his own, and of course naturally he wants to have enough money so that he can paddle his own canoe, and he might also have thought, "Well, it is not so sure to invest the money in general contracting because it is—you don't make money on every job you take. It is a risk."

Q. Well, did you succeed in getting any capital in? A. No, we did not.

Q. Any outside capital?

A. We did not succeed in getting any capital. And when we were about to figure the Bremerton job, we could not handle that, and that is why Clyde Phillips that I have just mentioned was contacted and he says, "I know of a contractor that is possible could go along with you," and he said, "This man that I have in mind is a man that you know very well, and he is worth around $60,000 anyhow." And finally he told us who that man was—he says, "Well, it is your own brother-in-law, Erickson of the West Coast Construction Company."

So we dropped in on Erickson, and we were led to believe that he was worth anyhow $60,000.

Clyde Phillips represented Erickson, which was the West Coast Construction Company, and he represented the Western Construction Company and

(Testimony of George Johnson.)

the West Coast Construction Company as a joint venture in his own office, and how he did it I don't know but we got the bond for the two companies, and it [131] was decided then that Erickson would have a 40 per cent interest in this Bremerton job and the Western Construction Company, a partnership, would have 60 per cent.

First, as we were called upon to put up some money in the bank for to get additional insurance or a bond for this Holly Park contract or, rather, the West Park contract——

Q. (Interposing): That is the Bremerton contract, is it?

A. That is the Bremerton contract, yes, why Erickson said, "Well, I cannot put in any money. I haven't got it." And he could not borrow it. So, when we called upon him to put up this extra money, we just had to shoulder that whole burden.

We figured that Erickson was worth $60,000, and we figured that he could carry his burden, 40 per cent, but after we were through we found out that we had to shoulder all of the burden, you might say, with the exception that he helped us in getting the surety bond. But otherwise we could have just as well had it without that.

Now, then, we had, you might say, exhausted all possibilities of any outsider to put in any money with us.

So we had talked of this idea of getting our own children to go with us to a certain extent and raise

(Testimony of George Johnson.)

the $60,000. We started from there, with the idea of raising $60,000 and planning on how this could be done—to raise the $60,000. In other words now we had the same amount of cash in the bank, [132] but we had $60,000 worth of notes that could be called upon any time if we should get in a tight spot. We had this $60,000 worth of notes, and if we got in a tight spot we could call upon this reserve.

Q. With regard to those notes, I will have them identified, but to whom were the notes made payable?

A. They were made payable to the general partners, to J. A. Johnson, George Johnson and Albin Johnson.

Q. And now, with respect to the first limited partnership, which of your children were taken into the partnership?

A. Lloyd Johnson and Bernice Wallin.

Q. Tell us about Lloyd. What has been his education and what was his age at the time that his note was taken?

A. Oh, I presume he was about 35.

Mr. Potts: One note is missing. We will try to find it by tomorrow morning.

The Court: Very well.

Mr. Potts: I think, if I may, to save confusion I will recall this witness to the stand later to identify these first notes then.

The Court: Very well.

(Testimony of George Johnson.)

Q. (By Mr. Potts): Will you tell us about those first notes—I mean the notes on the first partnership—the first limited partnership. What was their amount, do you remember? [133]

A. They were notes from Lloyd Johnson of $10,000, and likewise another from Mrs. Bernice Wallin of $10,000.

Q. Now, will you give us Lloyd's background, as to his education?

A. Well, Lloyd is a graduate engineer from the University of Washington, and during his high school years and also during his University years he always worked on one of our jobs every summer whenever he had a vacation.

Q. When did he first commence working for the Western Construction Company—at what age?

A. I think he was either 12 or 13—around there. The first job that he worked on was the Shafer Building on Sixth and Pine, and I think that he must have been either 12 or 13 at that time.

Q. All right.

A. And he worked on several jobs. He worked on the Courtright Creek Bridge up at Mount Rainier. He worked on the Bellingham Hotel. He worked on the University—when they built the addition to the pavilion over at the University of Washington. And he worked on the Puget Sound Bank Building.

Q. That is in Seattle?

A. Oh, yes, right here in Seattle. Well, I guess it would be—there was just about a different job for

(Testimony of George Johnson.)

every year that he worked on during his school years. And when he was through with school, why he worked for us over on that job [134] at Coulee Dam. His position there at Coulee Dam was—he done the engineering work there, and also done the bookkeeping on the job. There he was required also to engineer false work, and all the steel work and caison work had to be engineered, and drawings made and sent over to the engineers, for the purpose of having them approved. And that was a job that was quite a bit out of the ordinary. So it took a man that had real education in that line of business.

Q. After Coulee Dam what did Lloyd do?

A. Well, after Coulee Dam of course he was largely—whenever he worked, he worked in the office, until he was invited by—he went then with Kuney during this time that we were, you might say, unable to handle any work for a while—we we were so badly bent so that we were not quite sure that we ever would be able to take up contracting again. So he was invited then to go up to Montana and be assistant superintendent on their dam building there, and he asked——

Q. (Interposing): Is that the Fort Peck Dam?

A. That was Fort Peck. And he asked me after he was married what he should do, if we had an outlook to get some work, or should he take this opportunity up at Fort Peck. And he said, "'It will just be a short period, and by the time that

(Testimony of George Johnson.)

that job is through maybe you will have something, and you will get something started."

So when he actually was through there, why he came back [135] and worked with us again. But being that he got acquainted with Kuney, why Kuney came down to Seattle here and invited him then to come and figure a job with him, which he did. And after he figured this job I thought well, they may not get that work anyhow. So I was not too terribly worried, and I was not too terribly severe that he should not go in there. But they got the work that they figured on, and he got that started. And of course he worked then most of the time in Kuney's office. But as you have already heard here he has been interested in us, or with us in this partnership here, and whenever we have been in a position where we needed him, why he has always seen that he gives us time to estimate and work with us. I know several jobs that I can recall from memory that he helped us in estimating.

As you know, when you take out a plan to figure, why you cannot decide on how long you are going to have that plan. The engineer that checks figures decides for you when the figure is going to be in. And there is no use taking out a plan unless you can figure by that set hour. And therefore it is needless to explain to you that a man that has education can go through a set of figures faster than a couple of fellows that haven't got much education.

Q. Did Lloyd ever assist you after the formation

(Testimony of George Johnson.)

of the general partnership in any other way besides estimating and taking off quantities from plans, and so forth? [136]

A. Well, yes. Whenever we have needed a man we will say to be our spokesman—to mean a fellow that had education, and argue our points, why we always had a chance to call on him.

Q. What about getting materials?

A. Well, he has at times helped us in using his pry to get materials.

Q. What word is that that you just used?

A. I used the word, "pry." There was a time in contracting history that when you got a job, the material men would come to you and would be willing to sell you the material. But lately it is up to the contractor to go out and see where he can possibly buy it.

Q. Showing you that which I have had marked for identification of Petitioners' Exhibit 6—will you mark this, Madam Clerk?

(Document above referred to marked Petitioners' Exhibit 6 for identification.)

Q. (By Mr. Potts): Will you tell the Court what that is?

A. Well, this is a letter from Kuney & Johnson to us, telling that they have a quantity of nails held for us out at Peterson's Hardware.

Q. Where is that?

A. Peterson's Hardware is a wholesale [137] hardware establishment here in Seattle.

(Testimony of George Johnson.)

Q. Who did that? A. Lloyd Johnson.

Q. Were nails difficult to get during this period?

A. Oh, nails were just about impossible to get.

Mr. Potts: We offer Petitioner's Exhibit 6 for identification in evidence.

Mr. Payne: No objection.

The Court: It will be received as Petitioner's Exhibit 6.

(Document heretofore marked Petitioners' Exhibit 6 for identification received in evidence.)

Q. (By Mr. Potts): Now, Mr. Johnson, tell the Court with relation to Lloyd, whether or not he was involved in your intentions to start this limited partnership. Did he figure in your intentions?

A. Well, of course my idea was that, if I could, to get him interested in the partnership, and if I could get him interested in the parhnership that he would eventually come back and work for us all the time in our outfit. In other words, I never thought that it would get up to that, that he would absolutely start for good to work for Kuney. I thought that that was only going to be a temporary proposition. [138]

Q. What has been his success with Mr. Kuney?

A. Very good.

Q. Now, Mr. Johnson, did Lloyd have any interest in the Western Construction Company—the partnership—prior to the formation of the limited partnership? A. Yes.

(Testimony of George Johnson.)

Q. What was the nature of that interest?

A. Well, he was—he had an interest in the Western Construction Company, which was from his mother's estate. I lost my first wife, and although Richard, Lloyd and Bernice have never drawn that money, that was set aside by the Court for to be their share. And I was appointed guardian for the three children.

Mr. Potts: Will you mark this as Petitioners' Exhibit 7 for identification, Madam Clerk?

(Document above referred to marked Petitioners' Exhibit 7 for identification.)

Q. (By Mr. Potts): What was your wife's name? A. Amanda Katherina Johnson.

Q. Showing you Petitioners' Exhibit 7 marked for identification—I take it that you have seen that before—have you? A. Yes.

Q. Will you tell the Court what that is? [139]

A. Well, this is a photostat copy of the probate.

Q. I will ask you if it is not the decree of distribution? A. Yes.

Q. Or order of distribution, as it is called there?

A. Yes, sir.

Q. Of the estate of Amanda Katherina Johnson, deceased? A. That is right.

Q. What County or State was that probated in?

A. In King County, Seattle, Washington.

Q. Seattle is the seat of King County, is it not?

A. Yes, sir.

(Testimony of George Johnson.)

Q. Now, referring to page 2 of the exhibit, with reference to Western Construction Company, is there any decree of the Court in that respect?

A. Why, it sets aside a certain piece of property, which is like getting——

Q. (Interposing): No, I am not referring to the real estate. I am referring to the Western Construction Company. Let me direct your attention. I believe it is the last paragraph here on page 2.

A. Yes. It sets aside 275.48/3952.88 of the interest in the Western Construction Company; one-sixth interest in the first mortgage of Lot 6——

Q. (Interposing): Just as it concerns the Western [140] Construction Company.

A. All right.

Q. Does not the decree provide as follows: "To each of the three minor children, Rachel Doris, Lloyd Wallace and Bernice Katharina 275.48/-3952.88 of the interest in the Western Construction Company." A. Yes, sir that is correct.

Mr. Payne: As of what date?

Mr. Potts: I will ask him that.

Q. (By Mr. Potts): Will you give us the date of this decree?

A. It is dated the 15th day of September, 1921.

Q. And it is signed by what judge—by King Dykeman, is it not?

A. It is signed by King Dykeman.

Q. By the way, what were the ages of the three children at that time—at the time of this decree—approximately?

(Testimony of George Johnson.)

A. I presume Bernice was about 3 years old; Lloyd might have been about 8, and Rachel around 11 or 12.

Q. Was there a guardian appointed for the three children? A. Yes.

Q. Do you know who was appointed guardian?

A. I was appointed a guardian.

Q. You were appointed a guardian? [141]

A. Yes.

Q. Did you ever convey to the children this interest in the Western Construction Company?

A. No, it never was conveyed, because at the time that the children became of age, why we were very badly in need of every dollar that we could get our hands on, and I talked to the children about it, and they were willing to wait until later on.

Mr. Potts: We offer, if the Court please, this Petitioners' Exhibit 7 marked for identification in evidence.

Mr. Payne: If Your Honor please, I shall have to object to it on the ground that it is before the date when they said their partnership had terrible losses and they lost everything and had to form a corporation and start over again. I do not think it has any meaning or purpose in view of what has already been testified to. So I object to it.

The Court: Well, I do not know how much weight and value it will have as testimony, but in a case of this kind it is the usual practice of the Court to receive any testimony that the Petitioners

(Testimony of George Johnson.)

have of this sort, so I will overrule the objection.

Mr. Payne: All right.

(Document heretofore marked Petitioners' Exhibit 7 for identification, received in evidence.) [142]

Q. (By Mr. Potts): I think you have finished with your explanation about the guardianship. At the time that you took the two notes, one from Lloyd and one from Bernice, what were their approximate respective ages—that is, the notes for their interest, or for the money that they had invested in the limited partnership?

A. Well, Lloyd, I presume was around 35 and Bernice about 32, and Rachel, she must have been oh, about 39.

Q. Well, were Rachel and Bernice married at that time? A. Yes.

Q. With respect to Bernice, what was her financial condition at the time you took this note from her? A. Oh, pretty good.

Q. Well, can you give us anything a little more definite?

A. Well, I knew that they had a home that was worth maybe $12,000 or $15,000.

Q. What did Mr. Wallin do at that time?

A. At that time he was manager of the Safeway Store in Renton.

Q. Was that a large store or a small operation?

A. Quite a large store.

Q. Do you have any idea what income he had?

(Testimony of George Johnson.)

A. Well, of course he received a salary, but he also [143] had a percentage check each month. That I don't know for sure—what he did get altogether.

Q. Mr. Wallin will testify here himself, will he not? A. Yes.

Q. Would you place any value upon the partnership interest at that time of Bernice in the Western Construction Company—can you place any value upon that? I mean, her separate estate here as shown by that decree?

A. Well, of course I have never really figured up what that estate would amount to, but from my knowledge I would say that it was worth anywhere from $12,000 to $15,000 at that time.

Q. There was some real estate also set out in the decree in which there is a distributive interest, is there not? A. That is right.

Q. Now, Mr. Johnson, with the knowledge that you possess as trustee, or original executor, and then guardian, and then trustee of this share in their mother's estate, will you tell the Court why you took a note for their interest so that they could get funds to invest in the limited partnership?

A. Well, naturally, if we should swell our carrying capacity with the bond people, we had to have the notes, or have something tangible that could be relied on as an asset. If I had taken money out of the children's estate and put it [144] into the Western Construction Company, it would have been just like taking money out of one pocket and

(Testimony of George Johnson.)

putting it into another. But being that the children were willing to put up this note, it gave us $60,000 assets.

Q. Now, what about Rachel? In 1942 in this first partnership she did not have a partnership interest. Will you tell the Court the reason for that?

A. Well, at that time I asked Rachel whether she wanted to go with us, the same as the rest of them. But she was not quite sure—she was just a little reluctant, and, of course, we realized also that there was some liability attached to this here. So it was not all roses, and maybe she considered something about the Coulee Dam job, and I didn't blame her so much for sort of being a little hesitant——

Q. (Interposing): Well, she didn't come in.

A. She didn't come in.

Q. Now, what about Betty or Lorraine?

A. Lorraine——

Q. (Interposing): When did she come in?

A. She came in on the second—about the same time as Richard came in.

Q. Well, did you have any other children at that time? A. Yes, I then had another boy.

Q. What is his name?

A. His name is George Rodney. [145]

Q. What was his age in 1943.

A. Well, he is 19 now.

Q. He is attending the University, is he?

A. Yes, sir.

Q. Now, regarding Betty, what was her marital status at the time that the second limited partnership was formed? A. She was married.

(Testimony of George Johnson.)

Q. And who was her husband?

A. His name is Ellingson.

Q. And what was his occupation at that time—in 1943? A. Well, he was in the Marines.

Q. In the war? A. In the war.

Mr. Payne: I didn't hear that.

The Witness: He was in the Marines.

Q. (By Mr. Potts): What was their marital status, financially?

A. Well, he had inherited some money from his father's estate, and he had some money besides that.

Q. Do you know what his intentions were about the Western Construction Company?

A. Well——

Q. (Interposing): At that time, I mean.

Mr. Payne: If your Honor please, I object to what his intentions were. I do not object to what he may have said [146] or done.

The Court: Yes.

Mr. Potts: Yes. I think that that is hearsay.

Q. (By Mr. Potts): Did he work for Western Construction Company?

A. Well, as soon as he got back from the war, why he started immediately to work for us.

Q. And how long did he work for you?

A. He worked for us as long as we had work.

Q. How did Rachel and Betty achieve their interest in the second limited partnership?

A. Well, they achieved it in this way, that they prevailed upon their brother and sister that they

(Testimony of George Johnson.)

would let them in on this here now, and they figured out that it was all right. I had no objection, because it gave me perhaps a chance for Leonard Gustafson to come back into the business at that time.

Leonard Gustafson, when he first started to go with my daughter, why he was studying medicine, and I talked him out of that and told him, "Well, you have a much better field if you will take engineering, like Lloyd," and he finally changed from that career into engineering. But when he finally was through the University, why, that was right in the middle of the depression. During his time of going to the University he had spent most all of his Saturdays in a butcher shop, [147] working as a butcher. Now, he was wondering whether after he got through the University—whether he should try to get in with us, or should he continue with the butcher business. And we tried at all times to enlarge our capacity as far as finances went so that we could have gotten Leonard in right away. But we were waiting, trying to get a foothold, and he, of course, as he went on, he got a foothold in the butcher business. Se he has always followed that line, although it was not exactly his choice, and it was not our choice. But the condition made it so.

Q. Well, what about Mr. and Mrs. Gustafson—Rachel's and Leonard's ability to respond to a judgment, say of the size of that note at the time that they signed it, in 1943?

A. At that time they could have handled that

(Testimony of George Johnson.)

note very fine. They might have been able to handle a couple of them.

Q. What about Rachel, out of her own sole and separate estate?

A. Well, of course she had money in the Western Construction Company already.

Q. But even outside of that, could she have paid the note?

A. Well, you figure her half of the community—of estate, you mean?

Q. No. I mean without taking their community property into consideration—just her sole and separate estate. [148] She had money of her own that was not owned by Mr. Gustafson, didn't she?

A. Well, I really don't know exactly how much that was. She might have had $4,000 or $5,000 of her own.

Q. Yes. Now, this note was for how much?

A. It was for $5,000.

Q. Now, what about Roy and Albin starting with the partnership? I mean Roy and Winston starting with the first limited partnership in 1942? Did they do any work for the company?

A. Roy—I think it was in 1942 when he was working on the Alaska stock pile Transit shed, and he worked there——

Q. (Interposing): When you were preparing bid on it, did he work on that ?

A. Well, he worked preparing bids on it, then after we got it, why he was engineer there, and also assisted in the superintendence there.

(Testimony of George Johnson.)

Q. Do you remember what jobs you had in 1942? Perhaps I should not say that—do you remember what jobs you had after the creation of this limited partnership, we will put it that way.

A. Well, we had this job that I just mentioned, the Alaska Transit Shed. We also had the two pier sheds for the Port of Seattle down on the waterfront here.

Q. What was the size of those three jobs? [149]

A. Well——

Q. (Interposing): Were they large or small?

A. Well, those pier sheds I presume were something over a million dollars. I am not quite sure about that now, but they are large jobs anyhow.

Q. They were about half of that amount, weren't they—about $500, weren't they?

A. Well, now, it might be that. It could possibly be that they did not reach a million dollars.

Q. What other jobs, if any, did you have in that year after the formation of the partnership—the limited partnership?

A. Well, we had the Boeing work.

Q. Is that the job that has been referred to here as the cafeteria? A. That is right.

Q. Who did the work there?

A. Well, Roy was there, and my brother John was—he had sort of, say, to look after it.

Q. Now, let us go on with Roy. After 1942 what did Roy do—in 1943 and 1944?

A. Why, after—I don't remember now what

(Testimony of George Johnson.)

time it was that he went up to Alaska. That was some time in 1943 or 1944, wasn't it?

Q. I think I can state that Mr. J. A. Johnson testified [150] that it was in 1944. Would that refresh your memory?

A. Yes, I think it was in 1944, yes, that he went up to Alaska, but until that time he worked with us going from one job to another.

Q. What kind of work did he do?

A. Well, he done engineering work, and he also done the same as Lloyd done on the work. If it was a question of having someone to speak for you, why you send the fellow that could talk their language. I know down at the Alaska Transit Shed I was in a little hot water with the inspector there as to the material of fill there. It was specified a certain material for the fill. The inspector claimed that this did not come up to specifications. Well, I called on Roy to talk this specification to the inspector, and he untangled the snarl.

Q. You are not a graduate engineer, are you?

A. No, I am not.

Q. Neither is Albin, is that correct?

A. No, he is not.

Q. Now, Mr. Johnson, after these limited partnerships were formed, was there any change in the way that the general partners ran the business?

A. No, sir.

Q. Were there any meetings of any kind had with the limited partners as to the control over you as to running the [151] business? A. No.

(Testimony of George Johnson.)

Q. Do you know whether any certificates of interest in the business were ever issued to any of them? A. No.

The Court: He asked you if you knew. Do you mean to say that there were none issued?

The Witness: There were none issued.

Mr. Potts: Thank you, your Honor.

Q. (By Mr. Potts): Were there any officers elected by the limited partners or by the limited general partners?

A. No, there were no officers elected.

Q. Were there any committees, or a board of trustees, or a board of directors elected?

A. No. No board of trustees of any kind.

Q. Were there any by-laws adopted?

A. No by-laws of any kind.

Q. How were your records kept at the bank with respect to the authority to draw checks and to sign notes after the limited partnerships were formed?

A. Oh, the three of us—myself, John and Albin—we signed a card, and any one of the three of us—we didn't have to sign, more than one of us, to make a check valid.

Q. And what about on notes? [152]

A. Notes, if it was a big note, why I think that we were called in—the three of us.

Q. Were any limited partners' signatures ever secured? A. No.

Q. At one time, after the years in question here, there was another signature, was there not, authorized at the bank? A. Yes.

(Testimony of George Johnson.)

Q. What was the purpose of that?

A. Well, you mean when Albin went to Sweden?

Q. Yes.

A. Well, Albin authorized Winston, his son, to sign the checks in his place.

Q. Other than that was there any limited partner that had any authority to sign anything?

A. No. They had no authority to sign anything.

Q. Who ran the business?

A. J. A. Johnson and Albin and myself.

Q. The three general partners, is that right?

A. That is right.

Q. Now, with respect to the interest of the limited partners was there—will you tell the Court whether there were any restrictions placed by you, or if you know, by any other general partner on the right of any of the limited partners to withdraw any earnings, if there were any, from the company? [153]

A. No. When the money was earned, why any of the partners had the right to withdraw whatever they had earned.

Q. Did they do that?

A. No, they did not but, of course, we didn't do that either.

Q. Didn't any of the limited partners ever withdraw any money?

A. Oh, yes. But I mean that they didn't need to withdraw their money.

Q. Was there any understanding of any kind that you had with your limited partners—referring

(Testimony of George Johnson.)

to your children—or, as far as you know, with any of the other limited partners, that these notes were not to be paid out of their own assets if the company should fail?

A. No, but the understanding was that this was put up for to give us that much more carrying capacity.

Q. Can you tell the Court whether the limited partners understood that or not?

A. They were all told the meaning of it—fully—every phase of the proposition.

Mr. Potts: I think, if the Court please, I am through inquiring in chief, with the exception that I should like to reserve the right—we have two sets of notes there, and in order to get them introduced out of order I should like to withhold my examination regarding them until we can locate this [154] other original note.

The Court: Yes, you may do that. We will now take a ten minute recess. You are through with the witness at this time, I take it, Mr. Potts?

Mr. Potts: Yes, your Honor.

The Court: Very well, we will take a ten minute recess.

(Witness excused.)

(Recess.)

(Testimony of George Johnson.)

Cross-Examination

By Mr. Payne:

Q. Mr. Johnson, at the beginning of your testimony you said that Mr. Philip Johnson and Mr. Clyde Phillips were invited to come into the partnership at different times. A. That is right.

Q. You offered them yourself to give them an opportunity to put money into the partnership, is that right? A. That is right.

Q. And they didn't want to do it?

A. Well, Mr. Philip Johnson didn't want to do it. Clyde Phillips, he would have done it, but he would have wanted the biggest part of the profits.

Q. Did you offer them a proposition, like you offered the children?

A. Well, similar. They would have possibly gotten a [155] little better proposition than the children. In other words, we hadn't gotten to the point with Philip Johnson yet of talking really as to how much he was going to have, because he declined the offer or the invitation.

Q. Did you offer to give them the money to start with and put in the business and take a note, and let them pay you back, if, as and when they could?

A. If Philip Johnson would have been willing to give us a proposition, giving us a note, it would have been just as valuable to us as money, because he really could have acted.

Q. I asked you if you offered him the money to come back to you, would you give him an interest?

(Testimony of George Johnson.)

A. I asked him if he would invest money with us.

Q. And he didn't want to do it? A. No.

Q. You said that as a result of your ararngements with the children on the limited partnership agreements, you had $60,000 in notes. Those were your individual notes, and not the partnership notes, were they not?

A. Yes. In other words, on my personal statement I could show a $20,000 asset there that I didn't have previous to that time and——

Q. (Interposing): Wait a minute now. You mean on the partnership statement, or on your own individual statement? [156]

A. I mean on my own individual statement.

Q. Oh, yes.

A. But the individual statement was always used in the partnership for backing of any kind.

Q. Well, now, what about the amounts that you set over to the children—the $20,000 that you set over to the children in the partnership? Where did that come from?

A. The $20,000 that was set over to the children came from George Johnson, and it was put into the partnership, and that is what they gave the note for.

Q. And they gave the note back to George Johnson to offset that amount? A. That is right.

Q. The partnership itself didn't have any more assets than it had before, did it?

A. No. You might say that the same amount of

(Testimony of George Johnson.)

money was in the pot, but we had $60,000 worth of notes, which were an asset to the three general partners.

Q. To you individually?

A. Well, yes, to the three individual partners.

Q. Now, when did Lloyd go with Kuney?

A. Oh, I would say the latter part of 1941—somewheres around there.

Q. He had formed a partnership with Kuney before you made this new partnership arrangement, isn't that so? [157]

A. Oh, I really don't know if he had formed any other partnership than that he went and figured on a job.

Q. I show you Petitioners' Exhibit No. 6, and ask you if this does not say, "Kuney-Johnson Company, Contractors." A. That is right.

Q. With Max J. Kuney and Lloyd W. Johnson.

A. Yes, but what partnership they had perfected I don't know yet—just exactly what kind of a partnership they had. By this time they no doubt did have some written documents, but you a good many times go and figure a job with somebody without a partnership agreement, and I do not think that it was Lloyd's idea, when he went on this first job, that he would be with Kuney very long. In other words, he figured this job, and it turned out to be pretty good, and they figured another one, and so forth.

Q. When was Lloyd on the Montana job that you spoke of? A. Lloyd had no interest in that.

(Testimony of George Johnson.)

Q. Well, when was he on that, that is my question. A. When was he on that?

Q. Yes.

A. Well, I presume that that must have been around 1937, I should judge.

Q. You did not identify it, and I wanted to know when it was. So he had been working with Kuney off and on——

A. (Interposing): Well, he was working on that one job [158] for Kuney, and after he was through there he came back and worked—he came back and worked quite a while with us, and then for some reason or other he met Kuney here in Seattle on a visit here, and they commenced to talk, and Kuney said that he would like to figure this job and, "Would you like to help me figure it?" So he helped Kuney to figure the job, and they got it. Kuney was not a general contractor. He was a dirt moving contractor, so that is why he wanted Lloyd's ability to figure this building contract.

Q. When did Lloyd do estimating for you? I was not very clear on when he did it. Did he do odd jobs for you?

A. Oh, yes. He did odd jobs for us right along after he was with Kuney.

Q. How much time did he spend with you in 1942, do you know?

A. Oh, I would say that it would average—oh some time around—counting the hours that he spent, that it would average maybe a day a week. In other words, contracting is sort of peculiar. One day you

(Testimony of George Johnson.)

have a little leisure, and then the next day you start working at 7 o'clock in the morning and you may work until 2 o'clock at night before you go home. That is you do that the day before you turn in the bid. I thought you possibly were pretty well acquainted with those things.

Q. Are you talking about 1942? [159]

A. I am talking about 1942, yes, sir.

Q. What about 1943?

A. That was quite a common occurrence, that we would be short of time and short of help, and we would ask him to come and give us a lift. And some time he came out either to my brother's house or my house, if he figured it was easier to go home, and have something to eat, and then he would not have to go down to the office.

Q. Don't you think that he might have done that for you even aside from any partnership connection, being your son?

A. Well, I don't know. It is easier for anybody to help and push up hill if they know that there is something in it for them.

Q. You would be disappointed if he didn't do it for you, wouldn't you?

A. Well, you would not expect a man to come week after week and give you a lift and not have anything in it.

Q. Now, you didn't ever pay Lloyd on a salary basis, like you did Winston or Roy, did you?

A. No, because whenever he helped us, it was just in a spell like that, but Roy has helped us a

(Testimony of George Johnson.)

good many times since he started in Alaska. As a matter of fact, he now looks after our business, you might say, entirely. We are not down at the office, but he looks after things that need to be looked after there. He has an office right in our—in fact, he is in our [160] office right now.

Q. You said that Lloyd sometimes helped you, and you introduced Petitioners' Exhibit 6 to show that he helped you get some nails one time?

A. Yes.

Q. Didn't you help anybody during the war years on materials?

A. I do not think that I helped anybody that was outside of my immediate family. In other words, why should I help my competitor?

Q. Well, of course Lloyd was in the family, however, and you might expect a little more help from him on that account, might you not?

A. Well, in other words a lift like that—I will tell you how hard the nails were to be gotten. When we were working at Holly Park I went out with my car and I went through Seattle, and I went through Everett, and Marysville, and the small towns around here, and I bought nails by the five pound packages—anything from five pounds up to a keg of nails, and when I got back in the evening I might have a couple of hundred pounds of nails, having spent a whole day trying to get them. That is how hard nails were to get at that time. And I remember that at Marysville the price of nails was

(Testimony of George Johnson.)

supposed to be $3.60 for twenty penny nails, and I bought a keg of nails in Marysville that I paid $8.00 for. [161]

Q. Mr. Johnson, I show you Petitioners' Exhibit 7, and I will ask you if you were the administrator of the estate of your former wife?

A. Yes, sir.

Q. And you also became the guardian of your minor children? A. That is right.

Q. And you testified as to the contents of that exhibit and the interests in the estate which were due the children as shown by the Court order?

A. Yes, sir.

Q. Now, what happened to this partnership along in 1935 and 1936—the Western Construction Company partnership?

A. Well, I think I have explained that pretty thoroughly, what happened to it.

Q. Well, what about the Coulee Dam job?

A. We lost money on that.

Q. How much? Everything you had in the partnership?

A. Well, pretty well, we were pretty well cleaned out.

Q. Were you completely cleaned out?

A. Well, we didn't go bankrupt, but we were pretty badly bent.

Q. What do you think that this interest would have been worth at the lowest point of the status—the financial status of the partnership along in 1935,

(Testimony of George Johnson.)

1936 and 1937? [162] What would the interests of these children have been worth—I am asking you if you know.

A. That I would not be able to say. Before I could answer that I would have to have somebody that knows bookkeeping to see what that would be. And it would also be pretty hard to say because it depends on how much you could sell that property that I had at that time.

Q. What property did the partnership have? I thought that they were completely out of business for a period.

A. Well, the property that we had at that time —at that time we had it up as collateral at the bank, but the bank never foreclosed on us. They said, "We know you fellows, and we will do all we can for you." Of course, there is a limit that a bank can do, but what they could do, why they were always willing to do.

Q. Did you individuals have to go out and try to dig up money to pay off your debts?

A. Oh, sure, we tried all the time to pay off our debts.

Q. Did you pay them all off?

A. There is not a single one that lost a penny on us, even with that big loss. There is not a single one who can say they lost money on the Western Construction Company.

Q. The interests which the children had in this decree of the Court were still subject to the operations of that partnership, were they not? [163]

(Testimony of George Johnson.)

A. Well, I feel even if I had gone broke at that time and I lost the children's money, it would have been my place, if I could get on my feet again, to repay them, just the same as I repaid the other people that I owed money to. Don't you think so?

Q. As a business matter, yes, but a moral matter it might make a different result. But you cannot say what value it was in 1936-1937 when you had your partnership closed?

A. Well, I know those few dollars, they were of real value to me to hang on and try to get on my feet again.

Q. If you had it.

A. Well, we had a few dollars, and they were really precious, and the few dollars that we had were not spent on fancy hats either. I will tell you that.

Q. You gave testimony about Bernice Wallin. You said that she had a home. Wasn't that her home and her husband's home?

A. They had it together.

Q. Do you think it was paid for, or do you know?

A. Well, I know that it was—at least it was paid for, the most of it. I am not quite sure if they owed anything on it, but I am quite positive that it was all paid for.

Q. When?

A. When it was bulit. When they built it. [164]

Q. When was it built?

A. Oh, it was built a couple of years prior to that.

(Testimony of George Johnson.)

Q. Prior to what? A. Prior to 1942.

Q. One question I forgot to ask you. Did you keep records for the children in connection with the estate of your deceased wife? Did you keep an accounting for them with respect to this estate—Petitioners' Exhibit No. 7?

A. Well, there wasn't any accounting to keep because as long as I didn't pay them, why they still had that interest with me.

Q. This estate has not been finally closed yet, has it? A. No.

Q. Are you still guardian?

A. Well, I am not still guardian, but when they became of age I talked this over with them and asked them if they wanted the money, and I told them that if they left it in I would be very happy to have them leave it in.

Q. Did you ever make an inventory or an accounting to the Court with respect to these children? A. No.

Q. You have never been released then, have you?

A. I don't think so.

Q. So this thing is still hanging over for final disposition? [165] A. That is right.

Q. You stated with respect to the note that you received from your children that you wanted it to show to the bonding company. Did you ever tell the company—the bonding company that it was given for a stated interest in the partnership?

A. Yes.

(Testimony of George Johnson.)

Q. Did they know that that was to offset an interest which was set out in the partnership books for the children?

A. Yes, but the agents that we done business with here in Seattle, it was to their interest to see that our estate or partnership was built up so that they in turn could turn in a report to their office. In other words, for to get a bond on two million dollars you have to show an asset of a certain amount, and they have certain schedules and rules to go by, and to comply with those rules a person who asks for a bond has to have an asset of approximately so much before they can authorize the bond.

Q. Do you know what your partnership account showed before the formation of the partnership? Do you know the amounts?

A. Before the formation of what partnership?

Q. Before the formation of the limited partnership. A. You mean when we——

Q. (Interposing): You do not remember without the books [166] and records, is that it?

A. You mean when we first formed the Western Construction Company?

Q. No. In 1942.

A. When we formed the limited partnership?

Q. Yes.

A. No, I would not attempt to say what that asset was at that time. I know that we were terribly hard up for money and for financing, because we had to figure jobs in smaller brackets all the

(Testimony of George Johnson.)

time. Instead of coming up to a couple of millions of dollars, why we had to stay down in the second bracket in order to get the bond.

Q. In answer to Mr. Potts' question about the interests of the children in the estate of their mother, you said that if you had paid them and put that money back into the partnership it would be just taking money out of one pocket and putting it in another one. Is that the term that you used?

A. That is right.

Q. Wouldn't you say that the formation of the limited partnership was the same thing?

A. No, because the formation of the partnership was made on the basis that the children give us partners the amount of $60,000 worth of personal notes.

Q. Let me ask you this, did you give some money to the children in 1944 at the time that the partnership was formed? [167]

A. I think the evidence will show quite clearly that this money that was set aside for the children was from George Johnson, J. A. Johnson and Albin Johnson.

Q. Let me ask you this, did you give Lloyd a check for $10,000?

A. I really don't know if it was a check now, or how it was transacted. But I gave Lloyd money to buy in this partnership with.

Q. Do you know what date you gave it to him?

A. No, but of course there are things by which

(Testimony of George Johnson.)

we can find that out. We can find the checks on that, and that will tell us.

Q. Did you give it on condition that he would put it back in the partnership?

A. Well, naturally, it was arranged that he would buy this money with the note.

Q. Let me ask you this, did he endorse the check and give it back to you, or did he put it in the bank and give you his check?

A. Well, I really don't know. I don't know how that was transacted.

Q. Who does know?

A. I think our bookkeeper can inform you as to that.

Q. I see. Now, when Rachel and Lorraine came in, you said that they negotiated with the other two children, is that [168] right?

A. That is right.

Q. Why did they give you notes instead of to the children—why did they give you notes instead of to Lloyd and Bernice Wallin?

A. Well, because the first notes—they were given back to the children.

Q. What is that?

A. The first notes, and they all gave us new notes.

Q. You mean in 1943? A. In 1943.

Q. I see.

A. Yes, they all gave us new notes. It would have been the same thing, I think, but the first notes

(Testimony of George Johnson.)

were given back and the new notes were taken from all of them. Is that clear?

Q. When was Mr. Ellingson in the Marines—what year?

A. Well, he was in early. I think he was one of the first ones—he enlisted as soon as the war was declared.

Q. Was he back before 1942?

A. Well, that is just about the time that he came home.

Q. Did he work for the partnership?

A. As soon as he got back, yes.

Q. You don't remember what year?

A. No, I don't. [169]

Q. What kind of work did he do? You didn't tell us. A. He did carpenter work.

Q. I see. A. And foreman's work later on.

Q. And you paid him the same as you did other men of that caliber? A. That is right.

Q. How long did that continue before he went out?

A. Oh, that continued as long as we had any work.

Q. Is he the man that went into the butcher shop? A. Oh, no.

Q. That was Gustafson?

A. That was Gustafson.

Q. You said Gustafson had money in the Western Construction Company. What do you mean by that?

A. You mean Mrs. Gustafson, don't you?

(Testimony of George Johnson.)

Q. I beg your pardon.

A. You mean Mrs. Gustafson?

Q. Oh, did you mean Mrs. Gustafson? You meant your daughter? A. Yes.

Q. You said that she might have $4,000 or $5,000, but you were very general about that. What did you mean by that? A. Well——

Q. (Interposing): You just mean that you don't know, [170] or are you just speaking generally? A. Oh, no. I know that.

Q. How do you know that?

A. Well, I know that they have some money. I don't——

Q. (Interposing): Well, I mean in 1942.

A. Yes. That was the time that the butcher business might have been pretty good. Lately here meat is too scare and you cannot make much money as a butcher.

Q. Did he have a shop of his own, or was he working for a salary?

A. Oh, yes, he has a shop of his own. He has had it for years.

Q. Then that would be community property, whatever he made in that?

A. Yes, so I understand, but I know that she has some money.

Q. But she has no special interest in that—she is just interested with her husband, is that it?

A. Well——

Q. (Interposing): Well, never mind. Now, you

(Testimony of George Johnson.)

said that Roy did some estimating for you. Did he do that for you in 1942? A. Who?

Q. Roy. A. Roy Johnson? [171]

Q. Yes. A. Yes, sir.

Q. You didn't pay him anything in 1942, did you?

A. Well, we didn't pay either one of the boys if they just happened—if they came in and gave us an afternoon and night. But when they worked steady, then they got paid.

Q. That is why you didn't pay Roy in 1942?

A. I know that he helped us estimating evenings and in the afternoons, and little stretches like that. But for that they never asked pay.

Q. What year was the Boeing work done that you testified about?

A. Well, that was the latter part of 1942, wasn't it?

Q. I am just asking you. You testified that there were no certificates of interest given to the limited partners in connection with these partnership agreements. Were they given signed copies of the partnership agreement itself?

A. Well, I don't think so. I do not think there were any signed copies given to them.

Q. You said that Albin authorized Winston to sign his name for him while he went to Sweden.

A. Yes.

Q. What year was that?

A. Oh, that was—well, it was about a year ago

(Testimony of George Johnson.)

since Albin left for Sweden—a little earlier than a year ago. [172]

Q. That was since 1945? A. Yes.

Q. That was just a temporary arrangement?

A. Well, yes. That was while he was in Sweden.

Q. When Albin returned that was withdrawn from Winston—that temporary arrangement ceased, did it?

A. I really don't know. I really don't know whether that was withdrawn or whether it is still in effect. I would not say.

Q. You said that you general partners did not draw anything from the partnership. Do you happen to know what your personal drawings were during the year?

A. Well, did I say that we didn't draw anything?

Q. That you didn't draw anything—you didn't draw much, or you didn't have to.

A. Well, we didn't draw any more than we had to.

Q. You said that the children were told all phases of the proposal or proposition about the signing of these notes? A. Yes, sir.

Q. Did you also tell them that you expected to make enough money so that they would not have to worry about paying the notes out of their own pocket?

A. Well, I really don't know if I told them in those words, but I told them that we had a fair idea of making some money, but there was also a

(Testimony of George Johnson.)

chance in the contracting business [173] to lose money. In other words, they knew that. They lived with me during the years we were in Coulee Dam, and they knew how we were sweating for cents over there, and for dollars.

Q. You had the Rainier Beach government contract at that time, didn't you?

A. Well, I don't remember exactly what contract we had at that time. If you want to know that, I think the books are open to you. You can look at them and see just what contracts we had.

Q. I am asking you what you knew about it. You were running the business and you would know all about these things. You ought to know what contracts you had when this contract was signed. Your memory ought to be pretty good.

A. I must admit that my memory is not as good as it used to be, Mr. Payne.

Q. But you made some money in the business on the West Park project, didn't you, in 1941?

A. Yes. It turned out to be pretty good. To begin with we thought perhaps we would have another Coulee Dam, the way it looked. When we started out at West Park, it rained every day, and we could not drive in with a truck anywhere. The lumber had to be unloaded and then a chain had to be put around it to snag it with a caterpillar into place. [174]

Q. And you made money in spite of that, didn't you?

(Testimony of George Johnson.)

A. Well, when the dry weather came, why we done fine.

Q. And did you tell the children that you had expectations of making some more money in 1942, and later?

A. Naturally, we expected to make some money, but if it turned out as good as West Park, nobody could tell that.

Q. Did you tell them that you expected to make money so that they would not have to dig up the amount of those notes? A. No.

Q. You did not?

A. That is one of the reasons why Rachel didn't want to go in right away. She was a little leary of it, and we didn't want anybody—we didn't want to coax anybody either.

Q. Do you know what your partnership's stated capital was in that first partnership in 1942?

A. Well——

Q. (Interposing): Just state if you remember.

A. No, I don't remember.

Q. Let me ask you this, did you and J. A. Johnson and Albin Johnson use your own personal money and your own personal credit to further the work of these contracts carried on under the limited partnership agreements?

A. Well, we all—we used our own personal money to the very last penny. [175] When you signed on one of those bonds, well, you might as well say that you signed away everything to the last penny.

(Testimony of George Johnson.)

Q. I will ask you this, do you know how much stated partnership interest you had under that first agreement of February, 1942? Do you know how much was your stated partnership, or interest, or capital?

A. I must admit that I cannot tell you.

Q. You would not know whether it was $5,000, or $15,000 or $10,000?

A. Oh, it was more than $5,000. But you see, Mr. Payne, when you are contracting—as long as you take one contract, then you have that fairly defined, but you have ragged ends. The bonding company, as soon as you have that work going, they count that as a liability to you. You cannot come to a bonding company and say, "Here, I am pretty near finished on that job, and I am making about $20,000 on it." Because, as long as that contract is not closed that is set up like a liability to you. And then when you want to ask for a bond for more contracts, you have to show that you have an asset to a certain amount to warrant you for to get that bond.

Q. All right. Now, let me refresh your memory a little bit. You said that the children put in $60,000 in notes? A. That is right.

Q. You three general partners didn't have that much in the first partnership, did you? [176]

A. Cash money you mean?

Q. You didn't have that much stated capital in the first partnership, did you?

(Witness does not answer.)

(Testimony of George Johnson.)

Q. Isn't that true, that the children had more than you general partners—more than you three general partners had in the first partnership?

A. No, I don't think so.

Q. You do not think so? A. No.

Q. Well, will you get the books and records and show the Court what you had?

A. I think if you want to, you can have Mrs. Potts show you the records, which will tell you exactly how the status was. We haven't got anything, as far as I know—I know this partnership has not got anything to hide away from you fellows.

Q. Let me ask you this then, Mr. Johnson. In connection with that first partnership in 1942 did you use more than $15,000 capital as your own in that business—in 1942 I am speaking of?

A. Well, I would say that we would not have gotten very far with $15,000.

Q. You could not have gotten very far?

A. No. [177]

Q. I mean, just your own capital.

A. Our own capital—we could not get very far with $15,000.

Q. You think that you had more than that of your own money in the business?

A. I would think so.

Q. But you don't know? A. No.

Mr. Payne: That is all. We would like to reserve the right to call the witness back again after we get the figures into the record of the partnership.

The Court: Very well.